

Minnesota Attorney General: Administrative Rules Proceedings

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DEPARTMENT: ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

DATE: 12/5/80

Attn: MERWIN PETERSON

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

RECEIVED
NOV 20 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
EXECUTIVE DIRECTOR
of the
MINNESOTA STATE RETIREMENT SYSTEM

In the matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

AMENDED ORDER ADOPTING RULES

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:00 A.M. on Thursday, June 5, 1980, at the Office of Hearing Examiners, Room 300, 1745 University Avenue, City of Saint Paul, Minnesota after proper notice required by M.S. 1978, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules;

NOW, THEREFORE, IT IS ORDERED that these amended rules identified as Rules of the Executive Director of the Minnesota State Retirement System, Minnesota Deferred Compensation Plan (2MCAR SS 3.5001 through 2MCAR SS 3.5008) are adopted this 18 day of November 1980 pursuant to authority vested in me by Minn Stat S 352.96 Subd 4.

November 18, 1980

Paul L Groschen

PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

RULES AS ADOPTED (ALL NEW MATERIAL)

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2MCAR S 3.5001. Establishment and purpose of plan

A. Establishment of plan. This plan shall be known as the Minnesota Public Employees' Deferred Compensation Plan ("plan") and is hereby created in accordance with Minn. Stat. S 352.96. This plan shall constitute a continuation of the Minnesota Deferred Compensation Plan, approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975.

B. Purpose of plan. The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until termination of employment, financial hardship or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

2MCAR S 3.5002. Definitions

A. Definitions. Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

1. "Accounting date" means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical in the discretion of the board, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

2. "Beneficiary" means the person or legal entity provided for by the plan to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

3. "Board" means the Minnesota State Board of Investment.

4. "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as taxable income.

5. "Deferred compensation" means that portion of the participant's compensation which the participant and employer mutually agree to defer under this plan.

6. "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

   a. "Supplemental investment account" means the Minnesota Supplemental Retirement Investment Fund as established by Minn. Stat. S 11A.17 and managed by the board.

   b. "Fixed and variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minn. Stat. S 352.96, Subd. 2.

7. "Director" means the executive director of the Minnesota State Retirement System.

8. "Employee" means:

   a. any individual receiving compensation for services from the State of Minnesota which shall include any elected official, appointed official, independent contractor, or employee of the State of Minnesota, including employees of departments, agencies and instrumentalities, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in the Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees, or

   b. any individual receiving compensation for services performed for a political subdivision of the state and shall include any elected official, appointed official, independent contractor or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan, enumerated in Minn. Stat. S 356.20, Subd. 2.

9. "Employer" means:

   a. the State of Minnesota, or

   b. a political subdivision of the State of Minnesota, or an agency or instrumentality of the State of Minnesota or its political subdivisions.

10. "Includable compensation" means the compensation remaining after any deferrals through this plan and/or any amount of compensation excluded from taxable income as a result of contributions made for the benefit of an employee under a tax sheltered annuity or mutual fund shares held in a custodial account.

11. "Normal retirement age" means the earliest of the following:

    a. attainment of eligibility by the participant to commence receiving normal retirement benefits from one of the retirement systems enumerated in Minn. Stat. S 356.20, Subd. 2, or other Minnesota public employee pension plan of which participant is a member.

    b. Age 65.

12. "Participant" means any individual who has enrolled in this plan as provided in 2MCAR S 3.5004 and has not had a complete distribution of his or her deferred compensation account.

13. "Pay period" means a regular accounting period established by the employer for measuring and paying compensation earned by employees.

14. "Plan" means the Minnesota Public Employee's Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

15. "Prior plan" means the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration November 24, 1975 and any plans established thereunder by political subdivisions of the State of Minnesota.

16. "Projected retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2MCAR S 3.5004 D. 2. Only one projected retirement date may be designated and is to be designated on a form approved by the director.

17. "Termination of service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; or such other form of permanent severance as may be provided by appropriate law, contract or rules and regulations. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a termination of service.

18. "Taxable year" means the calendar year, beginning January 1 and ending on December 31.

B. Gender and number. Except when otherwise indicated by the context, any masculine terminology therein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

2MCAR S 3.5003. Responsibilities of the director. The director has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The employer or the director on behalf of the employer shall enter into a written agreement with each participant. Such written agreement and other application forms shall be in a form and manner as prescribed by the director and shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and such other information as the director deems necessary to administer the plan.

Pamphlets describing this plan and outlining the options and opportunities available shall be prepared under the direction of the director, and made available to eligible employees. Copies of the plan will be made available upon request. Individual account statements shall be made available to each participant at least annually.

2MCAR S 3.5004. Participation in the plan.

A. Eligibility. All employees who are receiving compensation on or after the date the plan becomes effective, and who have not revoked earlier participation pursuant to 2MCAR S 3.5004 F. during the most recent taxable year, shall be eligible to become participants in accordance with 2MCAR S 3.5004 B.

B. Enrollment. Any employee eligible to participate in accordance with 2MCAR S 3.5004 A. may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with 2MCAR S 3.5004 C. and D. The deferment will commence with the first full pay period following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

C. Minimum deferment. The minimum amount which may be deferred shall be ten dollars ($10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded.

D. Maximum deferment. The total amount of deferred compensation during any taxable year shall not exceed the limits provided in D. 1. and D. 2. of this rule.

1. 33-1/3% of includable compensation or $7,500 whichever is less; or

2. Each participant may designate a projected retirement date to be on or after normal retirement age which then shall be participant's normal retirement age under the plan. For each of three taxable years preceding his or her projected retirement date, a participant may defer an amount equal to the limits set forth in 2MCAR S 3.5004 D. 1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred. In no event, however, can the deferral exceed $15,000 for any taxable year.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable from taxable income, the contributions reduce the maximums established in paragraphs D. 1. and D. 2. of this rule.

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions and other mandatory deductions.

E. Modifications to amount deferred. The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of 2MCAR S 3.5004 D. may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first full pay period following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in 2MCAR S 3.5004 F.) may be made each taxable year.

F. Revocation of deferral. Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a non-deferred basis will then be restored beginning with the first full pay period following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in 2MCAR S 3.5005. The participant may not again be eligible to defer compensation until the next taxable year.

G. Duration of election to defer compensation. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with 2MCAR S 3.5004 E., or revokes the deferred compensation in accordance with 2MCAR 3.5004 F.

H. Deferral adjustments.

1. Deduction exceeds pay period salary available

   If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, state and federal income taxes, and any other deductions required by law, then no deduction for the plan will be made for such participant for such pay period.

2. Missed deductions and over-deductions

   If a deferred compensation deduction is missed for any reason whatsoever, no adjustment shall be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded.

3. Change in pay period length

In the employee's application for participation in the plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer or the director acting for employer shall compute and have withheld from such employee's salary an equivalent whole dollar amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

4. Maximum deduction

The employer shall insure compliance with the maximum deferment set forth in 2MCAR S 3.5004 D. If the amount deducted exceeds the maximum deferment set forth in 2MCAR S 3.5004 D., the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded.

2MCAR S 3.5005. Participants' accounts, investments and distributions

A. Deferred compensation accounts and valuation.

1. Participants' accounts

An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under 2MCAR S 3.5005 E. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in 2MCAR S 3.5005 A. 4. and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to 2MCAR S 3.5005 C., credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan.

2. Financial responsibility of the employer

The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minn. Stat. S 352.96, Subd. 2, until distributed in accordance with 2MCAR S 3.5005 D., E. and F.

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

3. Accounting dates and investment fund valuation

The supplemental investment account is to be valued by the board as of each accounting date in accordance with the provisions of Minn. Stat. S 11A. 17. Any withdrawals or distributions shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the account's value as of the accounting date.

The fixed and variable annuity account is to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board pursuant to Minn. Stat. S 352.96.

4. Administrative expense

Two percent (2%) shall be deducted each pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity for the change by the Legislative Auditor.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minn. Stat. S 352.96.

B. Unsecured general creditor. Title to, and beneficial ownership of any assets, whether in cash or investments which the employer may earmark to pay or measure any deferred compensation hereunder, shall at all times, remain as a part of the general assets of the employer. The participant and his beneficiary shall not have any property interest whatsoever in any specific asset of the employer on account of his election to defer any compensation under this plan. To the extent that any person acquires a right to receive payments from the employer under the terms of this plan, such right shall be no greater than the right of any unsecured general creditor of the employer.

C. Investment of funds.

1. Any compensation deferred by employees may be invested by the employer or by the director for the employer but there is no requirement to do so.

2. Investment options

The participant may select an investment preference from among the options provided in the deferred compensation account.

a. The supplemental investment account shall provide the following options: the income share account, the growth share account and the fixed return account.

b. The fixed and variable annuity account shall provide the following options: a fixed annuity and a variable annuity.

A participant may select any combination of these five (5) investment account preferences by specifying on the application the amount to be deferred under each investment preference. The amount to be deferred cannot be less than ten dollars ($10.00) per pay period per account selected.

3. Investment preference requests for future compensation

A participant shall, at the time of enrollment, make an investment preference request on an application provided for that purpose. Once made, an investment request shall continue for any deferments unless later changed by the participant.

A participant may, once in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first full pay period following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation

A participant may also, once in any taxable year, at the same time as a change is requested under 2MCAR S 3.5005 C.3., or in lieu of a change thereunder, change his or her investment preference request with respect to all previously deferred compensation. Such changes are limited to a change within the fixed and variable annuity account or within the supplemental investment account but not between the accounts and are also limited to transfers to fixed accounts only. These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2MCAR S 3.5004 E. and F. the month following the day on which one of the following events occurs:

1. Termination of service,

2. Death,

3. Unforeseeable emergency,

4. Delayed distribution date as provided in 2MCAR S 3.5005 F.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the method determined in accordance with MCAR S 3.5005 F.

1. A participant in the supplemental investment account may have deferred compensation distributed in one of the following methods:

   a. In a lump sum.

   b. In a lump sum purchase by the director of a fixed or variable annuity contract with the companies approved by the board pursuant to Minn. Stat. S 352.96, Subd. 2 which contract shall include the availability of the options set forth in 2MCAR S 3.5005 E. 2.

   c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months.

   The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten (10), then ten (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance.

2. A participant in the fixed and variable annuity account may have deferred compensation distributed in the form of monthly annuity payments. The annuity payments shall be based on one of the following methods:

   a. The life of the participant.

   b. The life of the participant or a period certain, whichever is greater.

   c. The joint lifetime of the participant and a named beneficiary.

   Notwithstanding any other rule to the contrary, if a fixed and variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum the month following a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under 2MCAR S 3.5005 H. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

F. Election of method and time of distribution. At any time prior to the date distributions are to commence (except for unforeseeable emergency distributions as provided in 2MCAR S 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed subject to the following rules:

1. A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.

   If a participant should die prior to the delayed distribution date, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant.

2. The distribution date or method of distribution may be changed at any time prior to distribution. Once payment has commenced, the distribution date or method of distribution may not be changed, except to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant.

3. Distribution may not begin prior to termination of service or death except for unforeseeable emergency distributions as provided in 2MCAR S 3.5005 G.

4. If no distribution date or method of distribution is elected, then a lump sum payment shall be made to the participant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment.

G. Unforeseeable emergency. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable emergency.

Examples of an unforeseeable emergency may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected and unreimbursed personal expense of a major nature that would not normally be budgetable; and the disability of the participant. Foreseeable personal expenditures normally budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute an "unforeseeable emergency.

Any participant desiring a distribution by reason of an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with 2MCAR S 3.5005 D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

H. Designation of beneficiary. A participant may designate a beneficiary to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee or dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minn. Stat. S 352.96 Subd. 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

I. Leave of absence. Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan.

2MCAR S 3.5006. Miscellaneous.

A. Nonassignability. The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, participant or beneficiary. An attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

B. Headings and subheadings. The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

C. Conflicts. In the event any form or other document used in administering the plan conflicts with the terms of the plan, the terms of the plan shall prevail.

2MCAR S 3.5007. Amendment of plan.

A. Amendment of plan. The director acting for the employer shall have the authority to propose amendments to this plan from time to time consistent with the provisions of Minn. Stat. S 352.96. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

B. Prior plan. This plan constitutes a continuation of the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975. All participants and any compensation deferred under the prior plan are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

1. All deferrals elected under the prior plan shall continue without further action as long as they do not exceed the limits in 2MCAR S 3.5004 D.

2. Any investment requests made under the prior plan shall continue to apply to any deferrals made under this plan in accordance with 2MCAR S 3.5005 C.

3. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2MCAR S. 3.5005 E. and F.

2MCAR S 3.5008. Applicable law. This plan shall be construed, administered and governed in all respects under and by the laws of the State of Minnesota, Minn. Stat. S 352.96.

APPROVED AS TO FORM AND LEGALITY

Dec 3 19 80

WARREN SPANNAUS, ATTORNEY GENERAL

BY H Theodore Gundel

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC - 4 1980
Joan Anderson Growe
Secretary of State
2:15 P.M.

MINNESOTA STATE RETIREMENT SYSTEM
529 Jackson Street
Saint Paul, Minnesota 55101

Tel. 296-2761

DATE : October 22, 1980

FROM : Paul L. Groschen
Executive Director

SUBJECT: In the Matter of the Proposed Repeal and Adoption of Rules Relating to the Minnesota Deferred Compensation Plan

Office Memorandum

H. Theodore Grindel
Special Assistant
Attorney General's Office
G-25 Administration Building

In accordance with your memo of August 21, (copy attached) I made the changes to rules suggested in numbers 2, 3, and 5. I also issued an amended order adopting the amended rules and resubmitted them to the Chief Hearings Officer for review.

Except for those documents which were retained by you, I hereby resubmit five copies of the amended adopted rules, and three copies of all other documents for your review and approval.

Paul L. Groschen
Executive Director

PLG:mg
encl.

RECEIVED
OCT 29 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA STATE RETIREMENT SYSTEM

IN THE MATTER OF THE PROPOSED REPEAL AND ADOPTION OF RULES OF THE EXECUTIVE DIRECTOR OF THE MINNESOTA STATE RETIREMENT SYSTEM RELATING TO THE MINNESOTA DEFERRED COMPENSATION PLAN.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 5, 1980 before George A. Beck, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Minnesota State Retirement System and;

WHEREAS, the Minnesota State Retirement System has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Minnesota State Retirement System has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Minnesota State Retirement System has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Minnesota State Retirement System has the responsibility of submitting the complete hearing record and the rules as adopted by the Minnesota Retirement System to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 24th day of July, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
MINNESOTA STATE RETIREMENT SYSTEM

In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Assistant Attorney General Merwin Peterson, do hereby declare that I have examined the proposed rules and all related documents and that, based upon them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Merwin Peterson
Assistant Attorney General

Dated: 7/30/80

STATE OF MINNESOTA
EXECUTIVE DIRECTOR
of the
MINNESOTA STATE RETIREMENT SYSTEM

In the matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

AMENDED ORDER ADOPTING RULES

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:00 A.M. on Thursday, June 5, 1980, at the Office of Hearing Examiners, Room 300, 1745 University Avenue, City of Saint Paul, Minnesota after proper notice required by M.S. 1978, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these amended rules identified as Rules of the Executive Director of the Minnesota State Retirement System, Minnesota Deferred Compensation Plan (2MCAR SS 3.5001 through 2MCAR SS 3.5008) are adopted this 5 day of September 1980 pursuant to authority vested in me by Minn Stat S 352.96 Subd 4.

September 5, 1980

Paul L Groschen

PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

original

STATE OF MINNESOTA
EXECUTIVE DIRECTOR
of the
MINNESOTA STATE RETIREMENT SYSTEM

RECEIVED
JUL 16 1980
OFFICE OF HEARING
EXAMINERS

In the matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

ORDER ADOPTING RULES

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After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Executive Director of the Minnesota State Retirement System, Minnesota Deferred Compensation Plan (2MCAR SS 3.5001 through 2MCAR SS 3.5008) are adopted this 16 day of July 1980 pursuant to authority vested in me by Minn Stat S 352.96 Subd 4.

July 16, 1980

Paul L. Groschen

PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

MEMBERS OF THE BOARD:
GOVERNOR ALBERT H. QUIE
STATE AUDITOR ARNE H. CARLSON
STATE TREASURER JIM LORD
SECRETARY OF STATE JOAN ANDERSON GROWE
ATTORNEY GENERAL WARREN SPANNAUS

MSDS Exhibit No. CF 15
File No. MSDS-80-001-HB
Date 6/5/80

OFFICE OF THE EXECUTIVE SECRETARY
Telephone 296-3328

STATE OF MINNESOTA
STATE BOARD OF INVESTMENT
Room 105, MEA Building
55 Sherburne Avenue
Saint Paul 55155

May 1, 1980

TO: Paul Groschen, Executive Director, State Retirement System

FROM: Jon White, Executive Director, State Board of Investment

SUBJECT: Deferred Compensation Rules

In accordance with the motion by the State Board of Investment at its meeting on April 8, 1980, I have reviewed the deferred compensation rules as required by 352.96 sub. 4 and approve the provisions relating to the fixed and variable annuity options.

Copy: Mike Miles, Bob Nardi

AN EQUAL OPPORTUNITY EMPLOYER

MEMBERS OF THE BOARD:
GOVERNOR ALBERT H. QUIE
STATE AUDITOR ARNE H. CARLSON
STATE TREASURER JIM LORD
SECRETARY OF STATE JOAN ANDERSON GROWE
ATTORNEY GENERAL WARREN SPANNAUS

OFFICE OF THE EXECUTIVE SECRETARY
Telephone 296-3328

STATE OF MINNESOTA
STATE BOARD OF INVESTMENT

Room 105, MEA Building
55 Sherburne Avenue
Saint Paul 55155

April 8, 1980

MINUTES OF THE STATE BOARD OF INVESTMENT

The State Board of Investment met in Room 130 in the Capitol on Tuesday, April 8, 1980, at 10:10 A.M. Governor Quie, Chairman, State Auditor Carlson, State Treasurer Lord, Secretary of State Growe, Attorney General Spannaus and Jon White, Executive Secretary, were present.

The minutes of the February 12, 1980, February 28, 1980 and March 7, 1980 meetings were approved after approval of Ms. Growe's motion deleting items 2) and 5) from the March 7, 1980 minutes.

The Executive Secretary referred to the Composition of State Investment Portfolio and the Asset Mix Guideline exhibits.

New certifications were mentioned by the Executive Secretary.

Portfolio transactions reported and approved from 2/1/80-3/28/80 were:

	Purchased	Sold
U. S. Government Obligations	$ 2,296,661,826.00	$ 18,016,592.72
Short-term Corporate Notes	431,335,000.00	-
Bonds	57,596,146.25	80,386.85
Stocks	34,730,694.80	16,068,128.42
Total	$ 2,820,323,667.05	$ 34,165,107.99

Bond commitments were $ 10,697,333.50.

Dividend changes were reviewed by Mr. White.

Continuing investment authority was granted to the staff.

Regarding Performance Evaluation, Mr. Carlson suggested that the Board should determine its risk and return goals, the appropriate structure of the funds and examine alternative strategies. The Board agreed to arrange a special meeting to hear presentations from several performance services and perhaps also discuss Mr. Carlson's ideas on "Board Concerns", and a Citizens/Board/Staff Task Force to review goals and objectives.

The Board took several proxy actions that are reflected in the attached memo from Treasurer Lord's office. These are in addition to a former Board decision to vote in favor of all resolutions favoring the Sullivan Principles.

The Board considered Mr. Lord's opinion that the Deferred Compensation Specifications should require disclosure of agent compensation in order to insure proper marketing to all employee segments and Mr. White's comments that this provision could restrict bidding, would be difficult to evaluate, and was not necessary as we would receive total expense calculations from each bidder. The Board voted to approve the specifications subject to technical amendments by the Attorney General's Office and to follow the suggested schedule subject to further input from Mr. Lord. The Board also authorized Mr. White to approve the rules relative to the fixed and variable annuity options in connection with the June APA hearing on deferred compensation.

Mr. White reported that the Board's legislation is in good form and is now part of the Tax Bill.

The Board adopted the proposed Staff Personal Investment Policy which is attached.

Mr. White indicated that the probable interest rates on the Fixed Return Account for fiscal 1980 are 10% for yearly rollover participants and 12% for long-term accounts.

The Board decided to retain a $ 100,000 security bond on the Executive Secretary at a cost of approximately $ 350.

The meeting was adjourned at 11:05 A.M.

Respectfully submitted,

Jonathan P. White

Jonathan P. White
Executive Secretary

Attachments

MSRS-80-001-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE EXECUTIVE DIRECTOR OF MINNESOTA STATE RETIREMENT SYSTEM

In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:00 a.m. on Thursday, June 5, 1980, at the Office of Hearing Examiners, Room 300, 1745 University Avenue, City of Saint Paul, Minnesota.

This Report is a part of a rulemaking procedure pursuant to Minn. Stat. §§ 15.0411 to 15.0417 and 15.052 to determine whether the current rules should be repealed and the proposed new rules should be adopted. A copy of this Report may be obtained from the Office of Hearing Examiners for the cost of reproduction.

Members of the agency panel appearing at the hearing included: Paul L. Groschen, Executive Director of the Minnesota State Retirement System (hereinafter referred to as MSRS), Ken Lang, Deferred Compensation Manager for MSRS, and Merwin Peterson, Special Assistant Attorney General, representing the MSRS.

Nine people signed the hearing register. No public witnesses spoke at the hearing. The MSRS submitted 16 written exhibits and one written comment was received from the public.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Executive Director shall, if he proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Executive Director on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Executive Director will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the testimony, exhibits and written comments, the Examiner makes the following:

FINDINGS OF FACT

1. On April 3, 1980, the MSRS filed the following documents with the Chief Hearing Examiner:

(a) Estimate of the length of the hearing and the number of participants.
(b) The Order for Hearing proposed.
(c) Notice of Intent to Solicit Outside Comments as published in 4 State Register 494 on September 24, 1979. (No comments were received.)
(d) The Notice of Hearing as proposed.
(e) The proposed rules and the rules proposed to be repealed.

2. On April 21, 1980, a Notice of Hearing and a copy of the proposed rules to be repealed and the proposed new rules were published at 4 State Register 1665.

3. On May 1, 1980, the MSRS mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On May 8, 1980, the MSRS filed the following documents with the Hearing Examiner:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Mailing the Notice of Hearing.
(d) The Certificate of the Secretary of State.
(e) An enclosure letter from the Executive Director listing the agency panel for the hearing.
(f) The Statement of Need and Reasonableness.

The record does not contain an affidavit of receipt of the Secretary of State's list as required by 9 MCAR § 2.105 C. but see affidavit executed 7.7.80

The documents filed were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through June 12, 1980, at 4:30 p.m. for the receipt of written comments and statements.

6. The Executive Director of the MSRS cited Minn. Stat. § 352.96, subd. 4 as his statutory authority for repeal of existing rules and promulgation of proposed new rules. That subdivision states:

> The executive director of the Minnesota state retirement system shall establish rules and procedures to carry out the provisions of this section including allocation of administrative costs as against the assets accumulated under this section. Funds to pay such costs are hereby appropriated from the fund or account in which the assets accumulated under this section are placed. Rules adopted after July 1, 1977, relating to the options provided under Subdivision 2, Clauses (b) and (c), must be approved by the state board of investment. A state employee shall not be permitted to make payments under a plan until the plan or applicable component thereof has been approved as to its tax-deferred status by the internal revenue service.

7. The provisions of the proposed rules relating to fixed and variable annuity options were reviewed and approved by the State Board of Investment as required by Minn. Stat. § 352.96, subd. 4. (Ex. 15)

8. According to the Executive Director, this rulemaking proceeding seeks to accomplish two main goals. First, it seeks to repeal existing rules which were promulgated in 1971, prior to the existence of § 457 of the Internal Revenue Code (hereinafter "IRC"). Second, it seeks to establish a new set of rules that would put into effect all amended provisions of Minn. Stat. § 352.96, and would conform to § 457 of the IRC and prove more easily readable.

9. 2 MCAR § 3.5004 sets out the provisions for participation in the plan. The Commissioner of Personnel commented that § 3.5004 E. should be expanded or a new section added to provide for one full-time deduction to the plan from any severance payment made to a terminating employee. The Commissioner's concern is that the IRS might rule that a severance payment, even if paid out over a five-year period, might be deemed by the IRS to be received upon termination. Income taxes would then take a substantial portion of the severance payment. (Ex. A)

The Executive Director replied as follows:

> The rules, 3.5004 B. and E., provide that participant may modify the amounts being deducted twice every year. This in effect, means that participant may have three levels of deductions during one calendar year. As stated in the Statement of Need, the principle (sic) reason for the limit is to hold down administrative costs which are borne by participants. It is our belief that the existing rules provide sufficient latitude to enable the employee to modify his deduction to have deducted all or a portion of his severance pay into the Deferred Compensation Plan. A special rule is not necessary and may not be desirable. The Minnesota Deferred Compensation Plan was modeled after the plans of other States and private companies. No other plans include such a special provision and, while I believe a deduction from severance pay is authorized, I would hesitate to include such an untried rule, and possibly invalidate the Plan in the eyes of I.R.S. (Ex. 16)

At the hearing, the agency offered an amendment to the first sentence of § 3.5004 D.2. as follows:

> Each participant may designate a projected retirement date to be on or after normal retirement age which then shall be participant's normal retirement age under the plan. (Ex. 13)

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The amendment is meant to clarify the effect of the rule. It would not appear to be a substantial change.

The subsection is needed and reasonable as proposed.

10. 2 MCAR § 3.5005 governs participants' accounts, investments and distributions. § 3.5005 A.4. permits the director to establish the charge to pay administrative costs. This is a change from the existing rule which sets a 2% charge with an increase possible if the Legislative Auditor concurs in the need for an increase. In his Statement of Need, the Executive Director stated that:

p.9

> Minn. Statutes section 352.96 provides that there shall be no employer contribution to the plan and that administrative costs of the plan must be borne by and assessed against the assets accumulated under the plan.
>
> Administrative costs consist of expenses for forms and brochures, counseling, data processing and overhead expenses such as, but not limited to, telephone, secretarial and filing expense. Due to the nature of the expenses, the difficulty of anticipating the level of the expenses, and the absolute requirement that all expenses be borne by the assets accumulated under the plan, it is mandatory that the Director have the flexability (sic) to adjust the charges to reflect actual expenses. Initially 2% shall be deducted from the deferred compensation deduction each pay period. This charge is based on MSRS experience with the present plan. The calculations supporting such charges are reviewed annually by the Legislative Auditor. (Ex. 8)

The Commissioner of Personnel stated that the existing rule provided the participants with some assurance that costs would be limited. She observed that:

> Nothing contained in the Statement of Need and Reasonableness justifies the repeal of the old language and adoption of new language giving the plan administrator absolute power, without recourse, as to the charges to be levied. Many of the plan participants are not members of the Minnesota State Retirement System, therefore, they cannot even influence the appointment of the director with their participation in the election of the State Retirement System Board of Directors. (Ex. A)

In his post-hearing written comment, the Executive Director stated that:

> There is an added dimension to the new Plan that did not exist with the previous Plan, and that is the companies selected by the Board to offer the fixed and variable annuity must also market the State products. To provide the companies an incentive to comply with the law to market all products, theirs and the State's in an unbiased manner, the Executive Director must share part of the administrative charge with them. This could vary depending upon the level of participation.
>
> The administrative fee charged the participants is set forth in participants share account record and is published in the Deferred Compensation brochures describing the Plan. Therefore, participants have full and advance knowledge of the fee. Also, MSRS, including the Deferred Compensation account, is audited annually by the auditor who verifies the propriety of the administrative charge.
>
> I would have no objection to amending rule 3.5005 A.4. by adding to the last sentence of the first paragraph after 'accordingly', "after review by the legislative auditor." (Ex. 16)

Essentially, the only reason that the Executive Director has presented for changing this rule is that he must now offer incentives to insurance companies to offer the fixed and variable annuities to be added as an investment option under the Plan. The statute, however, provides that, "All costs or fees in relation to the options provided under subdivision 2, clause (c), [which includes fixed and variable annuities] shall be paid by the underwriting companies ultimately selected by the state board of investment." Minn. Stat. § 352.96, subd. 3.

The record does not contain facts demonstrating the need for a reasonableness of a change from the existing rule. The Commissioner of Personnel states that the existing rule has not adversely affected the administration of the plan. It does permit the Executive Director to raise the charge above 2% when the Legislative Auditor verifies the need to do so. The Executive Director has not presented any facts to show that the existing rule has proved to be unworkable or burdensome. The need for such a change must be documented in the record. Even assuming that an incentive to an insurance company is properly an administrative expense, no facts in the record demonstrate that this would require a change to a more discretionary rule. Although the change suggested by the Executive Director in Exhibit 16 improves the proposed rule, a showing as to the need or reasonableness of deleting the 2% provision must still be made.

The Hearing Examiner raised questions as to the legality of not offering certain investment options in § 3.5005 C.2. and as to the necessity of specifying that there is no requirement to invest funds. (§ 3.5005 C.1. and

§ 3.5001 B.) (Ex. B) The questions were satisfactorily answered by the Director. (Ex. 16)

In response to a comment by the Hearing Examiner (Ex. B), the Executive Director has decided to use the term "unforeseeable emergency" in § 3.5005 G. in place of the terms "financial hardship", "unforeseeable financial emergency" and "serious financial hardship". (Ex. 16) The subsection should also be retitled.

Except for § 3.5005 A.4., § 3.5005 is needed and reasonable as proposed.

11. 2 MCAR § 3.5006 C. as proposed purported to allow the Director to amend these rules by administrative order if the I.R.S. found the rules to be inconsistent with § 457 of the IRC. Following a comment by the Hearing Examiner (Ex. B), the Director agreed that the last sentence could be amended to state ". . . the director shall (have the authority to) amend (by administrative order) any of the provisions . . .". (Ex. 16) So amended, the illegality is avoided and the section is needed and reasonable.

12. Based upon a suggestion of the Hearing Examiner (Ex. B), 2 MCAR § 3.5007 B.3. is proposed to be revised to reference both § 3.5005 E. and F. (Ex. 16) So amended, the rule is needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Executive Director of the MSRS gave proper notice of the repeal of the existing rules and promulgation of proposed new rules.

2. That the Executive Director of the MSRS has statutory authority to repeal existing rules and to promulgate the proposed new rules.

3. That the Executive Director of the MSRS has, except as noted at Finding of Fact No. 4, fulfilled all relevant substantive and procedural requirements of law or rule.

4. That the Executive Director of the MSRS has demonstrated the need for and the reasonableness of the proposed repeal of existing rules and the proposed new rules by an affirmative presentation of facts in the record, except as noted in Finding of Fact No. 10.

5. That the finding of need and reasonableness in regard to any particular rule amendment should not preclude or discourage the Executive Director of the MSRS from modifying the language based upon a further examination of the public comment, provided that no substantial change is made, and provided that the rules finally adopted are based upon facts appearing in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the existing rules be repealed and the proposed new rules be adopted in accordance with the Findings of Fact and Conclusions set out above.

Dated: June 25 , 1980.

GEORGE A. BECK
State Hearing Examiner

MSRS-80-001-GB

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 25th day of June, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me this
25th day of June, 1980.

Eileen A. Gaiovnik

EILEEN A. GAIOVNIK
Notary Public, Ramsey Co. Mn.
MY COMMISION EXPIRES
December 14, 1980

Mr. Paul L. Groschen
Executive Director
Minnesota State Retirement System
529 Jackson Street
Saint Paul, Minnesota 55101

STATE OF MINNESOTA
EXECUTIVE DIRECTOR
of the
MINNESOTA STATE RETIREMENT SYSTEM

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In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

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After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1. That I adopt the findings of fact, conclusions and recommendations contained in the Report of the Hearing Examiner dated June 5, 1980 Docket No. MSRS-80-001-GB.

2. That based on the findings and conclusions and recommendations of the Hearing Examiner, the following Rules to be amended in accordance therewith as follows:

   a). TABLE OF CONTENTS
   2MCAR S 3.5005
   G. ~~Financial hardship~~ Unforeseeable emergency

   b). 2MCAR S 3.5004 D. 2.
   Each participant may designate a projected retirement date to be on or after normal retirement age which then shall be participant's normal retirement age under the Plan. For each of three taxable years preceding his or her projected retirement date, a participant may defer an amount equal to the limits set forth in 2MCAR S 3.5004 D. 1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred. In no event, however, can the deferral exceed $15,000 for any taxable year.

c). 2MCAR S 3.5005 A. 4.
Administrative Expense
~~The director shall establish and levy a charge to be made against~~ Two percent (2%) shall be deducted each pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity of the change by the Legislative Auditor. Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minn. Stat. S 352.96. P.9

d). 2MCAR S 3.5005 D.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2MCAR S 3.5004 E. and F. the month following the day on which one of the following events occurs:

1. Termination of service,
2. Death,
3. ~~Financial~~ Unforeseeable emergency, P.10
4. Delayed distribution date as provided in 2MCAR S 3.5005 F.

e). 2 MCAR S 3.5005 G.

G. ~~Financial hardship~~ Unforeseeable emergency. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable ~~financial~~ emergency. P.12

Examples of an unforeseeable emergency ~~or financial hardship~~ may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected and unreimbursed personal expense of a major nature that would not normally be budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute ~~a "financial hardship"~~ an unforeseeable emergency". P.13

Any participant desiring a distribution by reason of ~~serious financial hardship~~ an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request. P.13

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with 2MCAR S 3.5005 D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

f). 2MCAR S 3.5005 F.

F. Election of method and time of distribution. At any time prior to the date distributions are to commence (except for ~~hardship~~ unforeseeable emergency distributions as provided in 2MCAR S 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed subject to the following rules:

1. A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.

   If a participant should die prior to the delayed distribution date, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant.

2. The distribution date or method of distribution may be changed at any time prior to distribution. Once payment has commenced, the distribution date or method of distribution may not be changed, except to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant.

3. Distribution may not begin prior to termination of service or death except for ~~hardship~~ unforeseeable emergency distributions as provided in 2MCAR S 3.5005 G.

4. If no distribution date or method of distribution is elected, then a lump sum payment shall be made to the participant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment.

g). 2MCAR S 3.5006 C.
C. Severabililty. If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby. If the Internal Revenue Service finds any of the provisions of this plan to be inconsistent with section 457 of the code or other regulations of the United States Treasury the director shall ~~have the authority to~~ amend ~~by administrative order any of~~ the provisions of this plan to bring them into compliance with the code or regulations.

p. 14

h). 2MCAR S 3.5007 B. 3.
Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2MCAR S. 3.5005 E. and F.

p. 14

July 16, 1980

Paul L. Groschen
Executive Director
Minnesota State Retirement System

File No. MSRS 80-cd-AA
Date 6/5/80

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Minnesota State Retirement System
Executive Director

Proposed Repeal and Adoption of Rules Relating to the Minnesota State Deferred Compensation Plan

Notice of Hearing

A public hearing concerning the proposed repeal and adoption of rules will be held at the Hearing Examiners Office, Room 300, 1745 University Ave., St. Paul, Minnesota, 55104, on June 5, 1980, commencing at 9:00 a.m. The proposed repeal and adoption of rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Mn. 55104, telephone (612) 296-8108 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the repeal and adoption of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

Public Hearings on Agency Rules April 28-May 5, 1980

Date	Agency and Rule Matter	Time & Place
April 28	Public Welfare Department Welfare Per Diem Rates for Nursing Home Providers Hearing Examiner: Jon L. Lunde	9:00 a.m., Room D, Veterans Service Bldg., 20 West 12th St. and Columbus Ave., St. Paul, MN

The proposed repeal and adoption of rules would repeal the rules governing the present Minnesota Deferred Compensation Plan and establish revised rules governing the Minnesota Deferred Compensation Plan as a restatement and continuation of the present Minnesota Deferred Compensation Plan.

The proposed rule will govern the eligibility to participate in the Plan, the method to enroll, the minimum and maximum deductions permitted, and the procedures to be followed to make changes in the amounts deducted, and to correct an error in the amount deducted.

The proposed rule provides for the records to be maintained, the responsibility of employer, ownership of the assets, valuation of the assets, charges to be assessed against the deduction for administration of the Plan, the type of investment accounts which may be selected by the participant for either past or future deferred compensation, the events under which distribution of the assets in the account may begin and the method and time of distribution.

The proposed rule goes on to provide a distribution in the event of an unforeseeable emergency or financial hardship, the designation of a beneficiary and provides for the non-assignability of the contract and that the deferred compensation monies cannot be attached.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §§ 352.96 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Paul L. Groschen,

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Executive Director, Minnesota State Retirement System, 529 Jackson Street, St. Paul, Mn 55101, telephone (612) 296-2761. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Mr. Groschen.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you must so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. §§ 10A.01, subd. 11, (1979 Sept.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

April 4, 1980

Paul L. Groschen,
Executive director

Rules as Proposed

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~~of the~~
~~State of Minnesota Deferred Compensation Plan~~

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~~2. Ten dollars is the minimum amount which may be deferred. Amount must be in whole dollars, cents will be disregarded. If initial application fails to show an investment option, investment will be in the income account. Limitations on amount of deferred compensation.~~

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(2) If no spouse or beneficiary, upon death of participant, payment made in lump sum to estate of participant.

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STATE OF MINNESOTA
DEFERRED COMPENSATION PLAN
Rules & Regulations
pursuant to Minnesota Statutes, Section 352.96

DCP I. ELIGIBILITY

For purposes of determining eligibility for participation in the Deferred Compensation Plan, the term "officer or employee of the State of Minnesota" shall include any elected official, appointed official or employee of the State of Minnesota, including employees of departments, agencies and instrumentalities, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees.

Any elected official, appointed official or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan enumerated in Minnesota Statutes Section 356.20, subdivision 2, shall also be eligible for participation in the Deferred Compensation Plan.

DCP II. PARTICIPATION PROCEDURES

1. Submission of Application

During periods designated by the Executive Director, Minnesota State Retirement System, an eligible employee may submit an application to the Executive Director, Minnesota State Retirement System, or to his employer, with respect to participation in the Deferred Compensation Plan or with respect to changes to be made in an existing participation program. The employer shall immediately forward such applications to the Executive Director, Minnesota State Retirement System. However, such participation or changes in existing participation will not become effective until the following January 1st.

Applications for participation in the Deferred Compensation Plan or changes in investment options or withdrawal age must be submitted to the Executive Director, Minnesota State Retirement System by December 15th. Change in age at which distribution will begin may be made only once during employee's period of public service. Such change in investment option or age at which distribution is to begin will apply only to compensation deferred in any subsequent calendar year. If the employee on other than his initial application fails to indicate an amount to be withheld or his choice of investment option, withdrawal age, withdrawal period or other items requested, the Executive Director shall continue employee's previous elections or statements for such items pursuant to the terms of the Deferred Compensation Plan application.

2. Deduction Options

The minimum amount which may be deferred shall be ten dollars ($10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded. If the application fails to show an investment option, the entire amount will be invested in the income share account.

While Internal Revenue Service provides no limitation on the amount of compensation which may be deferred, the gross wage is subject to retirement and social security deductions. Therefore, the amount deferred cannot exceed gross wages less amount needed to cover retirement deductions and social secur-

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ity taxes and the state and federal income taxes on such amounts. Consideration should also be given to any voluntary deductions, such as credit union, union dues, etc. However, deduction preference in computing payrolls will be given to deferred compensation deductions over any other voluntary deductions.

3. Investment Options

The participating employee may select one of five investment options, that is, 100% in the Income Share Account, 100% in the Growth Share Account, 50% in the Income Share Account and 50% in the Growth Share Account, 100% in the Fixed Return Account, or 75% in the Fixed Return Account and 25% in the Growth Share Account. The option selected will remain in effect for such calendar year and continue thereafter until changed by submission of a new application to the Executive Director, Minnesota State Retirement System. The State or Political Subdivision may, but is not required, to invest such deferred compensation in accord with the employee's request. Also, shares purchased under such designation will remain in such account until distributed as hereafter provided.

4. Distribution of Assets

The participating employee will have the amount of compensation deferred paid out in monthly installlments over a period of either 60 or 120 months, as indicated in his application deferring such compensation upon reaching whatever age is indicated in such Deferred Compensation Application, or if no age is indicated, upon reaching age 65, or becoming totally and permanently disabled. The compensation so deferred will be distributed in accordance with the agreement in effect during the period the compensation was withheld. Any change in age or period for distribution will affect only compensation deferred after effective date of the change. In event of the death of the participating employee, the amount in the deferred compensation account shall be paid out in the manner hereinafter provided. Also, if the application does not indicate the period over which distribution is to be made, 120 months will be considered as being in effect for compensation deferred pursuant to such application.

5. Employee's Rights to Assets

All funds and assets, together with interest, accumulations and increments thereon, in said Deferred Compensation Account shall remain an asset of the State or Political Subdivision, or its successor, and shall be subject to State or Political Subdivision ownership until such time as the participating employee's equity in the funds or assets of such account are distributed in accordance with the Deferred Compensation Agreement. The obligation of the State or Political Subdivision to the participating employee is a contractual obligation only and the employee shall have no preferred or specific interest by way of trust, escrow, annuity or otherwise, in and to the specific assets or funds held in the Deferred Compensation Account.

The employee's rights under the Deferred Compensation Agreement shall not be assigned, transferred or encumbered, nor shall they be subject to attachment, execution or process of any employee's creditors. Except as otherwise provided, the Deferred Compensation Agreement shall be binding upon the parties thereto, their heirs, assigns, executors, administrators, and successors in interest.

DCP III. DEDUCTIONS

1. Payroll Deductions

The State or other employing unit shall withhold and deduct from the participating employee's total compensation, on a pay period basis, the amount indicated on the employee's application. The amounts so withheld may, but are not required, to be credited and paid into a Deferred Compensation Account established by the Minnesota State Retirement System and shall be submitted to the Executive Director in a form and manner as he prescribes.

2. Deduction Exceeds Pay Period Salary Available

If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, and state and federal income taxes, then no deduction for the deferred compensation plan will be made for such participant for such pay period. No future pay period will be adjusted to take into account the loss of such deferred compensation deduction.

In case of death of the participant, deductions for the deferred compensation plan will continue on any subsequent pay check issued for such participant but subject to the provisions stated above.

3. Missed Deductions and Over Deductions

If a deferred compensation deduction is missed on a payroll period for any reason whatsoever, no adjustment will be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded by the Executive Director, Minnesota State Retirement System.

Except as provided above, the Department of Finance, Central Payroll regulations shall apply to deductions for the Deferred Compensation Plan for any state department or agency paid through Central Payroll.

4. Change in Pay Period Length

In the employee's application for participation in the Deferred Compensation Plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer shall compute and have withheld from such employee's salary an equivalent amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

5. Financial Responsibility of the State or Political Subdivision

The funds and assets paid into the Deferred Compensation Account shall be invested in shares of the Minnesota Supple-

~~mental Retirement Fund in accordance with Minnesota Statutes, Sections 11.18 to 11.24, and regulations established by the Executive Director until distributed in accordance with the Deferred Compensation Agreement.~~

~~The State or political subdivision shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said Deferred Compensation Account, nor shall the State or political subdivision be required to replace any loss whatsoever which may result from said investments.~~

~~DCP IV. BENEFICIARY~~

~~An employee may designate a singular beneficiary other than surviving spouse to receive payment of the employee's shares in the Deferred Compensation Account in the event of his death. If the designated beneficiary predeceases the employee or dies before receiving payment, the payment shall be made to the employee's estate. Such beneficiary designation shall be in writing and must be filed with the Executive Director of the Minnesota State Retirement System prior to the death of the employee. If no designation of beneficiary is filed with the Executive Director, the beneficiary shall be the surviving spouse, or if none, the employee's estate.~~

~~DCP V. DISTRIBUTION~~

~~1. Conditions for Distribution~~

~~The accumulated shares to the credit of any participant will be distributed upon reaching age 65, or any other age which may be specified by the employee in the Deferred Compensation Agreement; permanent disability; or death, whichever occurs first. Distribution shall begin or be made in January following the year in which the Executive Director, Minnesota State Retirement System, is notified of such occurrence and has received satisfactory evidence as may be required. Permanent disability shall be evidenced by submission of Social Security Administration determination of permanent disability provided the participant is covered by social security and fulfills social security disability benefit requirements. If a social security determination is not available due to non coverage, a doctor's statement indicating nature and extent of disability may be submitted in lieu thereof.~~

~~2. Responsibility of Participant~~

~~It is the responsibility of the participant, his heirs, or his estate administrator or executor, as the case may be, to notify the Executive Director, Minnesota State Retirement System or the participant's retirement fund chief administrator or former employer who in turn must notify the Executive Director, Minnesota State Retirement System of any of the above occurrences before the end of the calendar year of such occurrence, so that the distribution of the assets may commence in January of the following calendar year, if applicable, in accordance with the distribution provisions listed below.~~

~~If notification is not submitted to the Executive director, Minnesota State Retirement System, employer or retirement fund, by January 1st of the calendar year following the date of death, there shall be forfeited, ten percent (10%) of the shares in the Deferred Compensation Account of such deceased employee. Thereafter, for each succeeding January 1st that elapses without such notification of employee's death, an additional ten percent (10%) of the shares held by such deceased employee at date of death shall be forfeited. However, wherein death occurred in either October, November, or December, the first ten percent (10%) forfeiture shall be waived provided notification of such death is given within ninety (90) days of January 1st following date of death. The amounts forfeited under this provision shall be allocated for administrative costs.~~

~~3. Manner of Distribution~~

~~A. Upon reaching the age specified in the Deferred Compensation Application, or, if none specified, upon reaching age 65, the participating employee will receive monthly payments over the period of months selected in the application deferring such compensation consisting of an equal monthly redemption of the number of shares which such employee held at the time of reaching such age. The monthly payments shall commence in January of the year following the attainment of such age and continue until his account is depleted in its entirety.~~

~~B. In the event the employee becomes permanently disabled before the age applicable in 3A above, he will receive monthly payments over the period of months selected in the application deferring such compensation consisting of an equal monthly redemption of the number of shares which such employee held at the time of disability. The monthly payments shall commence in January of the year following submission of satisfactory evidence of such disability to the Executive Director, Minnesota State Retirement System and continue until his account is depleted in its entirety.~~

~~C. In the event of the death of a participating employee or former employee before distribution begins under 3A or 3B above, all funds in the Deferred Compensation Account of such employee shall be paid to the designated beneficiary, or if none designated, to the surviving spouse, or if none, to the estate of the deceased employee in accordance with the following:~~

~~1. If the above payment is to a designated beneficiary or to the surviving spouse, such beneficiary shall be paid monthly payments over the period of months selected in the application deferring such compensation consisting of an equal monthly redemption of the number of shares which the employee held with the payments commencing in January of the year following notification of death of the employee to the Executive Director, Minnesota State Retirement System, and continuing until the deceased employee's account is depleted in its entirety. In event of the death of the designated beneficiary or the surviving~~

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spouse while receiving monthly payments, the balance then remaining in the deceased employee's account will be paid in a lump sum to the estate of such designated beneficiary or surviving spouse in January of the year following such notification of the death of such designated beneficiary or surviving spouse.

2. If there is no designated beneficiary or surviving spouse, a lump sum payment of all funds in the Deferred Compensation Account shall be made to the estate of the employee in January of the year following notification to the Executive Director, Minnesota State Retirement System, of such death.

D. In the event of the employee's death during the period of distribution under 3A or 3B above, the employee's designated beneficiary, or if none, the surviving spouse shall be entitled to the monthly payments in accordance with the schedule arrived at for payments under 3A or 3B until the Deferred Compensation Account is depleted in its entirety. If there is no designated beneficiary or surviving spouse, the balance in the Deferred Compensation Account shall be paid in a lump sum to the employee's estate as of January of the year following such notification of death.

E. The employee in the application for participation in the Deferred Compensation Plan can elect for the distribution of such Deferred Compensation over a period of either 5 years (60 months) or 10 years (120 months). The participating employee may submit a new application each year indicating either a 5 year period or a 10 year period for distribution of his deferred compensation. However such election will apply only to compensation deferred in calendar years subsequent to the filing of such new application. If any application fails to indicate the period of time for distribution of the deferred compensation, the period of 10 years shall be applicable to compensation deferred pursuant to such application. The monthly payments required to be made in 3A, 3B or 3C shall be computed by dividing the total number of shares held under each period designation by 60 or 120 in accordance with the withdrawal period selected in the application or applications deferring such compensation so as to determine the number of shares to be redeemed and distributed to the employee or his beneficiary each month. Should such computation result in a quotient of less than ten (10), then ten (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the Deferred Compensation Account is depleted in its entirety. Growth and income shares are purchased and redeemed in whole units. If a participant has shares in more than one investment account, shares will be redeemed proportionally to the extent possible.

F. In the event of the employee's termination of public employment prior to reaching the oldest age specified in the Deferred Compensation Application, for causes other than provided in 3B or 3C, the Executive Director acting for the employer may, at his sole discretion, honor the provisions of the participant's deferred compensation agreement or distribute to the participant amounts from the deferred compensation account in a lump sum upon his termination, provided said lump sum does not exceed the participant's annual salary at the time of his termination, or the Executive Director may pay such amounts as specified in the participant's deferred compensation agreement but commence said payments at the time of his termination.

If the Executive Director elects to make payments upon participant's termination, either in a lump sum or over the period of time specified in the participant's agreement, and such determination is made prior to the fifteenth day of a month, redemption shall commence at the end of such month; otherwise, redemption shall commence at the end of the following month.

G. Notwithstanding any provisions of 3A through F above, any employee participating in the Deferred Compensation Plan or any former employee who has participated in such plan but has not reached the youngest age specified in the Deferred Compensation Application, may apply for an early withdrawal of certain amounts in the Deferred Compensation Account upon the occurrence of an emergency event as herein defined. Emergency events are defined as and limited to (1) participant's bankruptcy when evidenced by the filing of petition in bankruptcy in federal court or (2) financial losses resulting in participant's net outlay of amounts, over and above reimbursable claims, exceeding three times his gross monthly salary which said losses are occasioned by illness or accidents to participant, his family or property, and which have or will cause great hardship to the participant or beneficiary involved. The employee shall submit such evidence as may be required by the Executive Director to substantiate such loss. If withdrawal is approved by the Executive Director, payment shall be made in a lump sum and shall be limited to that amount necessary to meet the emergency situation. The balance in the Deferred Compensation Account shall, thereafter, be distributed in the manner provided in 3A through F above.

H. For each calendar year that funds are distributed, actually or constructively, from the Deferred Compensation Account, the Executive Director, Minnesota State Retirement System, shall issue to each person receiving, or entitled to receive, such payments, statement prescribed by Internal Revenue Service, informing such persons of the amounts so paid out by the Executive Director.

DCP VI. EMPLOYEE ACCOUNT INFORMATION

Annually, the Executive Director, Minnesota State Retirement System, shall provide a share account record for each participating employee, indicating the number of shares presently credited in such account. An accounting statement will be distributed annually to participants in the Deferred Compensation Plan. The Executive Director, Minnesota State Retirement System, shall distribute information concerning the availability of the Deferred Compensation Plan to eligible public employees from time to time as he shall deem appropriate.

DCP VII. ADMINISTRATIVE EXPENSE

In order to provide funds for administrative costs, two percent (2%) shall be deducted from the Deferred Compensation deduction each pay period, provided, however, that if such deductions prove to be excessive or insufficient to pay all necessary costs of administration, the Executive Director of the Minnesota State Retirement System shall adjust the charges accordingly.

~~However, any increase in administrative charges shall take effect only after the Legislative Auditor in reviewing the operations of the Minnesta State Retirement System concurs in the finding that costs of the Deferred Compensation Plan exceed the income from the 2% administrative charge.~~

Rules as Proposed (all new material)

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2 MCAR § 3.5001 Establishment and purpose of plan.

A. Establishment of plan. This plan shall be known as the Minnesota Public Employees' Deferred Compensation Plan ("plan") and is hereby created in accordance with Minn. Stat. § 352.96 and section 457 of the United States Internal Revenue Code. This plan shall constitute a continuation of the Minnesota Deferred Compensation Plan, approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975.

B. Purpose of plan. The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until termination of employment, financial hardship or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

2 MCAR § 3.5002 Definitions.

A. Definitions. Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

1. "Accounting date" means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical in the discretion of the board, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

2. "Beneficiary" means the person or legal entity provided for by the plan to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

3. "Board" means the Minnesota State Board of Investment.

4. "Code" means the Internal Revenue Code of 1954, as amended from time to time, or any successor statute.

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5. "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as taxable income for purposes of the code.

6. "Deferred compensation" means that portion of the paticipant's compensation which the participant and employer mutually agree to defer under this plan.

7. "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

a. "Supplemental investment account" means the Minnesota Supplemental Retirement Fund as established by Minn. Stat. §§ 11.18 and 11.19 and managed by the board.

b. "Fixed and variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minn. Stat. § 352.96, subd. 2.

8. "Director" means the executive director of the Minnesota State Retirement System.

9. "Employee" means:

a. Any individual receiving compensation for services from the State of Minnesota which shall include any elected official, appointed official, independent contractor, or employee of the State of Minnesota, including employees of departments, agencies and instrumentalities, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in the Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees, or

b. Any individual receiving compensation for services performed for a political subdivision of the state and shall include any elected official, appointed official, independent contractor or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan, enumerated in Minn. Stat. § 356.20, subd. 2.

10. "Employer" means:

a. The State of Minnesota, or

b. A political subdivision of the State of Minnesota, or an agency or instrumentality of the State of Minnesota or its political subdivisions.

11. "Includable compensation" means the compensation remaining after any deferrals through this plan and/or any amount of compensation excluded from taxable income as a result of contributions made for the benefit of an employee under section 403(b) of the code.

12. "Normal retirement age" means the earliest of the following:

a. Attainment of eligibility by the participant to commence receiving normal retirement benefits from one of the retirement systems enumerated in Minn. Stat. § 356.20, subd. 2, or other Minnesota public employee pension plan of which participant is a member.

b. Age 65.

13. "Participant" means any individual who has enrolled in this plan as provided in 2 MCAR § 3.5004 and has not had a complete distribution of his or her deferred compensation account.

14. "Pay period" means a regular accounting period established by the employer for measuring and paying compensation earned by employees.

15. "Plan" means the Minnesota Public Employee's Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

16. "Prior plan" means the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration November 24, 1975 and any plans established thereunder by political subdivisions of the State of Minnesota.

17. "Projected retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2 MCAR § 3.5004 D.2. Only one projected retirement date may be designated and is to be designated on a form approved by the director.

18. "Termination of service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; or such other form of permanent severance as may be provided by appropriate law, contract or rules and regulations. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a termination of service.

19. "Taxable year" means the calendar year, beginning January 1 and ending on December 31.

B. Gender and number. Except when otherwise indicated by the context, any masculine terminology therein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

2 MCAR § 3.5003 Responsibilities of the director. The director has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The employer or the director on behalf of the employer may enter into a written agreement with each participant. Such written agreement and other application forms shall be in a form and manner as prescribed by the director and shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and such other information as the director deems necessary to administer the plan.

Pamphlets describing this plan and outlining the options and opportunities available shall be prepared under the direction of the director, and made available to eligible employees. Copies of the plan will be made available upon request. Individual account statements shall be made available to each participant at least annually.

2 MCAR § 3.5004 Participation in the plan.

A. Eligibility. All employees who are receving compensation on or after the date the plan becomes effective, and who have not revoked earlier participation pursuant to 2 MCAR § 3.5004 F. during the most recent taxable year, shall be eligible to become participants in accordance with 2 MCAR § 3.5004 B.

B. Enrollment. Any employee eligible to participate in accordance with 2 MCAR § 3.5004 A. may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with 2 MCAR § 3.5004 C. and D. The deferment will commence with the first full pay period following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

C. Minimum deferment. The minimum amount which may be deferred shall be ten dollars ($10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded.

D. Maximum deferment. The total amount of deferred compensation during any taxable year shall not exceed the limits provided in D.1. and D.2. of this rule.

1. 33⅓% of includable compensation or $7,500 whichever is less; or

2. Each participant may designate a projected retirement date to be on or after normal retirement age. For each of three taxable years preceding his or her projected retirement date, a participant may defer an amount equal to the limits set forth in 2 MCAR § 3.5004 D.1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred. In no event, however, can the deferral exceed $15,000 for any taxable year.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable under Section 403(b) of the Internal Revenue Service Code, the contributions excludable under Section 403(b) reduce the maximums established in paragraphs D.1. and D.2. of this rule.

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions and other mandatory deductions.

E. Modifications to amount deferred. The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of 2 MCAR § 3.5004 D. may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first full pay period following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in 2 MCAR § 3.5004 F.) may be made each taxable year.

F. Revocation of deferral. Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a non-deferred basis will then be restored beginning with the first full pay period following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in 2 MCAR § 3.5005. The participant may not again be eligible to defer compensation until the next taxable year.

G. Duration of election to defer compensation. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with 2 MCAR § 3.5004 E., or revokes the deferred compensation in accordance with 2 MCAR § 3.5004 F.

H. Deferral adjustments.

1. Deduction exceeds pay period salary available. If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, state and federal income taxes, and any other deductions required by law, then no deduction for the plan will be made for such participant for such pay period.

2. Missed deductions and over-deductions. If a deferred compensation deduction is missed for any reason whatsoever, no adjustment shall be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded.

3. Change in pay period length. In the employee's application for participation in the plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer or the

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director acting for employer shall compute and have withheld from such employee's salary an equivalent whole dollar amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

4. Maximum deduction. The employer shall insure compliance with the maximum deferment set for in 2 MCAR § 3.5004 D. If the amount deducted exceeds the maximum deferment set forth in 2 MCAR § 3.5004 D., the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded.

2 MCAR § 3.5005 Participants' accounts, investments and distributions.

A. Deferred compensation accounts and valuation.

1. Participants' accounts. An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under 2 MCAR § 3.5005 E. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in 2 MCAR § 3.5005 A.4. and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to 2 MCAR § 3.5005 C., credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan.

2. Financial responsibility of the employer. The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minn. Stat. § 352.96, subd. 2, until distributed in accordance with 2 MCAR § 3.5005 D., E. and F.

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

3. Accounting dates and investment fund valuation. The supplemental investment account is to be valued by the board as of each accounting date in accordance with the provisions of Minn. Stat. §§ 11.18 and 11.19. Any withdrawals or distributions shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the account's value as of the accounting date.

The fixed and variable annuity account is to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board pursuant to Minn. Stat. § 352.96.

4. Administrative expense. The director shall establish and levy a charge to be made against the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minn. Stat. § 352.96.

B. Unsecured general creditor. Title to, and beneficial ownership of any assets, whether in cash or investment which the employer may earmark to pay or measure any deferred compensation hereunder, shall at all time, remain as a part of the general assets of the employer. The participant and his beneficiary shall not have any property interest whatsoever in any specific asset of the employer on account of his election to defer any compensation under this plan. To the extent that any person acquires a right to receive payments from the employer under the terms of this plan, such right shall be no greater than the right of any unsecured general creditor of the employer.

C. Investment of funds.

1. Any compensation deferred by employees may be invested by the employer or by the director for the employer but there is no requirement to do so.

2. Investment options. The participant may select an investment preference from among the options provided in the deferred compensation account.

a. The supplemental investment account shall provide the following options: the income share account, the growth share account and the fixed return account.

b. The fixed and variable annuity account shall provide the following options: a fixed annuity and a variable annuity.

A participant may select any combination of these five (5) investment account preferences by specifying on the application the amount to be deferred under each investment preference. The amount to be deferred cannot be less than ten dollars ($10.00) per pay period per account selected.

3. Investment prefererence requests for future compensation. A participant shall, at the time of enrollment, make an investment preference request an application provided for that purpose. Once made, an investment request shall continue for any deferments unless later changed by the participant.

A participant may, once in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first full pay period following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, once in any taxable year, at the same time as a change is requested under 2 MCAR § 3.5005 C.3., or in lieu of a change thereunder, change his or her investment preference request with respect to all previously deferred compensation. Such changes are limited to a change

within the fixed and variable annuity account or within the supplemental investment account but not between the accounts and are also limited to transfers to fixed accounts only. These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2 MCAR § 3.5004 E. and F. the month following the day on which one of the following events occurs:

1. Termination of service,

2. Death,

3. Financial emergency,

4. Delayed distribution date as provided in 2 MCAR § 3.5005 F.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the method determined in accordance with 2 MCAR § 3.5005 F.

1. A participant in the supplemental investment account may have deferred compensation distributed in one of the following methods:

a. In a lump sum.

b. In a lump sum purchase by the director of a fixed or variable annuity contract with the companies approved by the board pursuant to Minn. Stat. § 352.96, Subd. 2 which contract shall include the availability of the options set forth in 2 MCAR § 3.5005 E. 2.

c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months.

The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten (10), then (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance.

2. A participant in the fixed and variable annuity account may have deferred compensation distributed in the form of monthly annuity payments. The annuity payments shall be based on one of the following methods:

a. The life of the participant.

b. The life of the participant or a period certain, whichever is greater.

c. The joint lifetime of the participant and a named beneficiary.

Notwithstanding any other rule to the contrary, if a fixed and variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum the month following a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under 2 MCAR § 3.5005 H. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

F. Election of method and time of distribution. At any time prior to the date distributions are to commence (except for hardship distributions as provided in 2 MCAR § 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed subject to the following rules:

1. A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.

If a participant should die prior to the delayed distribution date, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant.

2. The distribution date or method of distribution may be changed at any time prior to distribution. Once payment has commenced, the distribution date or method of distribution may not be changed, except to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant.

3. Distribution may not begin prior to termination of service or death except for hardship distributions as provided in 2 MCAR § 3.5005 G.

4. If no distribution date or method of distribution is elected, then a lump sum payment shall be made to the partici-

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pant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment.

G. Financial hardship. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable financial emergency.

Examples of an unforeseeable emergency or "financial hardship" may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected unreimbursed personal expense of a major nature that would not normally be budgetable; and the disability of the participant. Foreseeable personal expenditures normally budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute a "financial hardship."

Any participant desiring a distribution by reason of serious financial hardship must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with 2 MCAR § 3.5005 D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

H. Designation of beneficiary. A participant may designate a beneficiary to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee or dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minn. Stat. § 352.96, subd. 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

I. Leave of absence. Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan.

2 MCAR § 3.5006 Miscellaneous.

A. Nonassignability. The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, participant or beneficiary. An attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

B. Headings and subheadings. The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

C. Severability. If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby. If the Internal Revenue Service finds any of the provisions of this plan to be inconsistent with section 457 of the code or other regulations of the United States Treasury the director shall have the authority to amend by administrative order any of the provisions of this plan to bring them into compliance with the code or regulations.

D. Conflicts. In the event any form or other document used in administering the plan conflicts with the terms of the plan, the terms of the plan shall prevail.

2 MCAR § 3.5007 Amendment of plan.

A. Amendment of plan. The director acting for the employer shall have the authority to propose amendments to this plan from time to time consistent with the provisions of Minn. Stat. § 352.96 and the code and regulations of the U.S. Treasury. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

B. Prior plan. This plan constitutes a continuation of the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975. All participants and any compensation deferred under the prior plan are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

1. All deferrals elected under the prior plan shall continue without further action as long as they do not exceed the limits in 2 MCAR § 3.5004 D.

2. Any investment requests made under the prior plan shall continue to apply to any deferrals made under this plan in accordance with 2 MCAR § 3.5005 C.

3. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2 MCAR § 3.5005 F.

2 MCAR § 3.5008 Applicable law. This plan shall be construed, administered and governed in all respects under and by the laws of the State of Minnesota, Minn. Stat. § 352.96, and section 457 of the code.

-MSKS Exhibit No. 3
File No. MSKS-80-CVI-CR
LS Date 6/5/80

RECEIVED
MAY 8 1980
OFFICE OF HEARING EXAMINERS

Affidavit of Mailing

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Repeal and Adoption of Rules relating to the Minnesota Deferred Compensation Plan.
(2 MCAR SS 3.5001 thru 2 MCAR SS 3.5008)

I, Paul L. Groschen, being first duly sworn, deposes and says:

That on the 1st day of May, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses certified by the Secretary of State as well as to all present members of the Minnesota legislature.

Paul L Groschen
Paul L. Groschen
Executive Director
Minnesota State Retirement System

Subscribed and sworn to before me this 1st day of May, 1980.

Beverly A. Halweg

BEVERLY A. HALWEG
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires July 4, 1985

(MSRS) Exhibit No. 4
File No. MSRS-80-60/PSD
SM Date 6/5/80

RECEIVED
MAY 8 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Repeal and Adoption of Rules relating to the Minnesota Deferred Compensation Plan.
(2 MCAR SS 3.5001 thru 2 MCAR SS 3.5008)

CERTIFICATE

I hereby certify that the attached 1 sheet 346 labels constitute the complete list of persons, associations, and other interested groups who as of 9:20 o'clock, this 22nd day of April, 1980, have requested that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
Secretary of State

By Donna Butt

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
JUL 16 1980
OFFICE OF HEARING EXAMINERS

In the matter of the Proposed Repeal and Adoption of Rules relating to the Minnesota Deferred Compensation Plan. (2 MCAR SS 3.5001 thru 2 MCAR SS 3.5008)

AFFIDAVIT

Kenneth Lang, being duly sworn on oath deposes and says:

1) That he is an employee of the Minnesota State Retirement System.

2) That on the 22nd day of April, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 22nd day of April in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Kenneth Lang

Kenneth Lang

Subscribed and sworn to before me this 7th day of July 1980.

Douglas Mewhorter 7/7/80

DOUGLAS MEWHORTER
Notary Public, Ramsey Co. Mn.
MY COMMISSION EXPIRES
August 6, 1980

Notary Public, Ramsey County, Minnesota. My Commission expires 8/6/80

MSRS Exhibit No. 8
File No. MSRS-80-001-GA
413 Date 6/5/80

RECEIVED
MAY 8 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

EXECUTIVE DIRECTOR

MINNESOTA STATE RETIREMENT SYSTEM

In the matter of the proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System relating to the Minnesota Deferred Compensation Plan.

STATEMENT OF NEED

The above captioned rules are a repealer and restatement of existing rules of the State Deferred Compensation Plan. The last time the above captioned rules were amended was November 24, 1975.

The revision of the rules is necessary to effect all the amended provisions of Minnesota Statutes, section 352.96 and section 457 of the United States Internal Revenue code. The Executive Director's specific statutory authority to adopt such rules is set forth in Minnesota Statutes section 352.96 subd. 4. The need for each rule is as follows:

2MCAR S 3.5001. ESTABLISHMENT AND PURPOSE OF PLAN

To set forth the name and legal authority for the plan, the continuity of the previous plan and the general purpose of the establishment of the plan.

2MCAR S 3.5002. A. Definitions.

To clarify the meanings of specific terms defined therein as used throughout the rules and to clarify the use of gender and singular and plural terms.

1. "Accounting date" is the day on which the share values of the invested Deferred Compensation monies is determined. The day is set as the last business day of the month, but can be more frequent if the Board determines it is necessary. The values as determined on the accounting date is the basis for purchase or redemption of shares.

7. Deferred Compensation Account

The establishment of the account is necessary to separately account for income, expenses, participants accumulations and payments.

a. Supplemental Investment Account

The presently existing fund established pursuant to M.S. Chapter 11.

b. Fixed And Variable Annuity Account

To provide the fixed and variable annuity option M.S. section 352.96 provides that the Board may solicit bids and enter into contracts with companies providing such products.

2MCAR S 3.5002 Continued

9. a. and b. "Employee"

The term employee includes all public employees in the State of Minnesota receiving compensation from State departments, Metro-level departments, State colleges and universities, counties, townships, villages, school districts or other political subdivisions including elected officials and consultants.

12. "Normal retirement age" is the earliest of either age 65 or, if the participant is a member of a public pension plan, the age at which full benefits without reduction because of age are available from that plan.

17. "Projected retirement date" is a date set by employee either on or after his normal retirement age in order to allow him to defer in excess of the normal limit to make up for years in which he may have deferred less than the limit allowed. Normal limits, maximum limits and the time period is explained further in rule 3.5004D.

2MCAR S 3.5003. RESPONSIBILITIES OF THE DIRECTOR

To set forth the Director's authority to establish and change management procedures for the administration of the plan and his responsiblity to participants of the plan. The Executive Director's authority to administer the plan and to establish rules is found in M.S. section 352.96 subds. 3 and 4. The section provides that the employer and employee enter into a written agreement. Such an agreement is required by the Internal Revenue Service code section 457.

Because of the length of the plan document, copies of it will be available only upon request in order to keep the cost of administration to a minimum. However, pamphlets will be made available, which explain the plan document provisions in understandable terms. Individual account statements will be sent to each participant annually so that participant can review his account balance and progress. However, because of the cost of the production of the statements, more frequent distribution will be held to a minimum.

2MCAR S 3.5004. PARTICIPATION IN THE PLAN

A. Eligibility

To prescribe and limit eligibility for participation in the plan.

B. Enrollment

To set forth a method of enrollment, the forms to be used and the commencement of deferment. IRS code requires that the employee and employer enter into an agreement and the purpose of the enrollment form is to effect this agreement. The 30 day waiting period to effect the change is required in order to comply with IRS code, which provides that all agreements for deferral must have been entered into before the beginning of the month and to allow sufficient time to process such requests.

2MCAR S 3.5003 Continued

C. Minimum Deferment

To establish a minimum contribution allowed in order for participants to enjoy full investment advantagement of participation in the plan. The value of one share of the Minnesota Supplemental Fund is always between $5 and $10, and M.S. section 11.19 subd. 2 allows purchase or redemption of only full shares. By setting the minimum contribution at $10, the least amount of monies per individual will be uninvested each month. Amounts less than a dollar are not allowed for efficiency of and cost saving in the administration of the plan. M.S. section 352.96 subd 4 provides that administrative costs of the plan are charged against the assets in the plan; i.e. the participants deferred monies, and therefore, it is very important to keep costs to a minimum.

D. Maximum Deferment

To set forth a maximum deferral allowed as required by the IRS code.

E. Modifications To Amount Deferred

IRS code requires that agreements providing for deferral or modifications of the amounts of deferral be entered into before the beginning of the month in which such deferral or modification is made. The 30 day period is required to comply with the code and to give sufficient time to administratively process such changes.

Participant is authorized to make two changes to the amount he has elected to defer each year. The number of changes allowed are restricted to hold down administrative costs.

F. Revocation Of Deferral

To authorize a participant to stop contributions to the fund.

The need for a written agreement and the 30 day waiting period is as discussed in B and E above. The Deferred Compensation can only be paid as provided in 2MCAR S 3.5005 in order to comply with IRS code. The participant is not authorized to participate again until the next taxable year in order to hold down administrative costs incurred in processing numerous and frequent changes.

G. Duration Of Election To Defer Compensation

Provides that unless and until participant takes further action or makes changes, his prior agreement remains in effect.

2MCAR S 3.5004 Continued

H. Deferred Adjustments

1. Deduction Exceeds Pay Period Salary Available

If the employee has insufficient net pay to allow for the agreed upon deduction, no deduction will be taken, as the state or other employer cannot make up the difference for employee. Further, for such a situation to occur, some negative change has probably occurred in the employee's pay status, and it would appear to be to the employee's benefit not to take deferred compensation.

2. Missed Deductions And Over Deductions

Over deductions must be refunded in order to insure the employee does not exceed the IRS imposed maximum. However, due to the expense involved for the payroll units and in the administration of the plan, missed deductions will not be adjusted.

3. Change In Pay Period Length

This rule provides for an orderly transition if the length of the employee's pay is changed.

4. Maximum Deduction

IRS code sets a maximum authorized deduction as described in 2MCAR S 3.5004D. This rule is necessary to insure such limits are not exceeded.

2MCAR S 3.5005. PARTICIPANTS ACCOUNTS, INVESTMENTS AND DISTRIBUTIONS

A. Deferred Compensation Account And Valuation

To set forth the amounts to be debited and credited to participants' individual accounts, the employer's investment responsibility and liability, the valuation method of the account balances and to establish an administrative expense deduction authorization.

1. Participants Accounts

An investment record for each participant is needed to accurately account for the individuals' compensation deferred, purchase of shares with the Deferred Compensation, crediting of interest, deduction of administrative expense and payments. Individual accounts may be debited or credited with management fees or investment costs as may be charged by the State Board of Investment or detailed in the contracts with the companies approved by the Board pursuant to M.S. section 352.96 subd 2.

2. Financial Responsibility Of The Employer

IRS code provides in order for a plan to qualify that:

2MCAR S 3.5005 Continued

"(A) all amounts of compensation deferred under the plan,
"(B) all property and rights purchased with such amounts, and
"(C) all income attributable to such amounts, property or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the State (without being restricted to the provision of benefits under the plan) subject only to the claims of the State's general creditors."

M.S. Section 352.96 subd 2 provides that "nothing in this subdivision shall be construed as to authorize an employer contribution, nor shall the state, the political subdivision, or other employing unit be responsible for any loss which may result from investment of the deferred compensation."

3. Accounting Dates And Investment Fund Valuation

The procedure for the valuation of the account is prescribed by M.S. sections 11.18 and 11.19, which provisions the Board is required to follow.

To provide the fixed and variable annuity option, M.S. section 352.96 provides that the Board may solicit bids and enter into contracts. The terms of these contracts shall provide for the valuation of the assets in the fixed and variable accounts, but the companies selected by the Board are required to use the same accounting date for consistancy and comparison with the values of the supplemental fund.

4. Administrative Expense

Minn. Statutes section 352.96 provides that there shall be no employer contribution to the plan and that administrative costs of the plan must be borne by and assessed against the assets accumulated under the plan.

Administrative costs consist of expenses for forms and brochures, counseling, data processing and overhead expenses such as, but not limited to, telephone, secretarial and filing expense. Due to the nature of the expenses, the difficulty of anticipating the level of the expenses, and the absolute requirement that all expenses be borne by the assets accumulated under the plan, it is mandatory that the Director have the flexability to adjust the charges to reflect actual expenses. Initially 2% shall be deducted from the deferred compensation deduction each pay period. This charge is based on MSRS experience with the present plan. The calculations supporting such charges are reviewed annually by the Legislative Auditor.

Administrative costs for the fixed and variable annuity accounts are provided in the terms of the contract because Minn. Statutes section 352.06 subd 4 states that all costs related to these options be paid by the underwriting companies selected by the Board. See explanation 2 MCAR S 3.5001 A. 7. b.

2MCAR S 3.5005 Continued

B. Unsecured General Creditor

Minnesota Statutes Section 352.96 requires that the Deferred Compensation Plan be adopted in such a manner as will qualify the deferred amount for benefits afforded under Federal and State tax laws, regulations and rulings. The IRS Code Section 457 requires that in order to be a qualified plan, the plan must provide that:

"A). All amounts of compensation deferred under the plan, B). All property and rights purchased with such amounts, and C). All income attributable to such amounts, property, or rights, shall remain (until made available to the participant or other beneficiary) soley the property and rights of the state (without being restricted to the provision of benefits under the plan) subject only to the claims of the State's general creditors."

In addition, Minnesota Statutes Section 352.96 subd. 2 provides that the amount of compensation deferred may be used to purchase shares in the Minnesota Supplemental Retirement Fund or in Fixed or Variable Annuity contracts from companies which are subject to regulation by the Insurance Commissioner. This section also provides that "The shares, accounts or contracts so purchased shall stand in the name of the State of Minnesota or other employing unit for the officer or employee whose deferred compensation purchased said shares until distributed to said officer or employee in a manner agreed upon by the employee and the Executive Director of the Minnesota State Retirement System, acting for the employer. Nothing in this subdivision shall be construed as to authorize an employer contribution nor shall the state, the political subdivision or other employing unit be responsible for any loss which may result from investment of the deferred compensation."

C. Investment Of Funds

1. See statement under 2MCAR S 3.5005 B (above)

2. Investment Options

Minnesota Statutes Section 352.96 provides that the deferred compensation may be used to purchase shares in the Minnesota Supplemental Retirement Fund established in section 11.18. Section 11.18 provides that there will be three accounts in the Minnesota Supplemental Fund: an income share account, a growth share account and a fixed return account. Minnesota Statutes section 352.96 also provides that the deferred compensation may be used to purchase savings accounts in Federally insured financial institutions, life insurance contracts and fixed annuity and variable annuity contracts. The options of the fixed annuity and the variable annuity are offered. The options of the savings accounts and life insurance are not offered. It was the decision of the Board and of the Executive Director to not offer the savings account option at this time as it is very much the same as the fixed return account of the Minnesota Supplemental. It would be somewhat of a duplication, and therefore, not needed. In addition, offering an excessive number of options to participants would tend to confuse participants and, as a result, be a disservice to them. It was also the decision of the Board and the Executive Director to not offer the life insurance option at this time because with purchase of life insurance under deferred compensation plans, there is considerable forfeiture for the first one or two years. It was felt that participants in a deferred compensation plan would not understand, or want, this forfeiture requirement and could better serve their life insurance needs through other methods.

3. Investment Preference Requests For Future Compensation

A change in investment preference is effective the first full pay period following thirty days from the receipt of the request in order to comply with that section of the IRS code which provides that an agreement for deferred compensation must be entered into before the beginning of the month in which it is deferred. Changes in investment preference are limited to once a year in order to hold down the administrative cost incurred in making such changes.

For investment preference requests for past deferred compensation, the reasons for the limitations and timing are the same as the previous paragraph. A change in past compensation from the variable account to a fixed account is provided so that as one nears retirement he can insure that his money is placed in a more secure account providing steady income. A change from the fixed account to a variable account is not provided because of the difficulty and possible adverse effects on the remaining participants, which would result in the redemption of fixed securities at market, and also to avoid the administrative expense involved in a tendancy which could develop by participants to 'play the market'.

D. Distribution Events

The distribution events are limited to the termination of service, death, financial emergency and a delayed distribution date in order to comply with the provisions of the IRS code.

E. Methods Of Distribution

1. Distribution from a supplemental investment account is limited to a lump sum or monthly installments over a period not to exceed 240 months. A participant may also direct that the lump sum be used to purchase a fixed and variable annuity contract with one of the companies approved by the Board pursuant to Minnesota Statutes Section 352.96 subd 2. Participant was given the flexibility of requesting payment in any number of months up to a limit of 240 months, which is twenty years, and is the equivalent of a normal life expectancy. Payment was limited to 240 months in an effort to return the deferred compensation to the participant in the normal life expectancy period and because IRS would not look favorably upon a plan in which participant could unduly delay receipt of the monies in order to pass it on to heirs.

2. A participant in a fixed and variable annuity account may have his deferred compensation distributed in the form of monthly annuity payments over the life of the participant, a period certain, or the joint lifetime of a participant and named beneficiary which are the normal methods provided in retirement programs, and by the insurance industry.

2MCAR S 3.5005 Continued

F. Election Of Method And Time Of Distribution

The delayed distribution date is provided to establish a date for commencement of payment following the separation from service. However, to comply with the IRS code the distribution date cannot be changed after distribution has commenced except to allow a lump sum withdrawal, nor prior to termination or death, except for hardship. Furthermore, distribution must be made following the 70th birthday if no other distribution date is elected.

G. Financial Hardship

The IRS code provides that distribution may not be made prior to separation from service except in the case of an unforeseeable emergency, which event is determined in the manner prescribed by the Secretary by regulation. Therefore, a distribution for a financial hardship is provided in the plan under certain limited conditions. Since the Secretary has not as yet issued the regulations, the conditions are limited to those situations which have, in the past, been approved by the IRS for such distributions.

H. Designation Of Beneficiary

The IRS code allows and defines a beneficiary and therefore, a designation of beneficiaries is provided in the plan. Only a singular beneficiary is allowed for compensation deferred in the supplemental investment account to hold down excessive administrative costs which would be associated with distributions to a number of beneficiaries. Since most participants would name a surviving spouse as their beneficiary, and to avoid the need of filing a beneficiary designation, the plan provides that if no designation is made, the surviving spouse shall be the designated beneficiary, and further, if there is no spouse, that a payment would be made to the participant's estate, in order to fix an provide and entity to which payment can be made.

I. Leave Of Absence

An employee on leave of absence, although he does not receive compensation and may not contribute to the plan, is considered to be a participant as long as he is on leave of absence, since he is still in employee/employer relationship with the employer.

2MCAR S 3.5006 MISCELLANEOUS

A. Non-assignability

See explanation 2MCAR S 3.5005 B. Unsecured General Creditors

B. Headings And Sub-Headings

To clarify the effective headings and sub-headings within the plan document and rules.

2MCAR S 3.5006 Continued

C. Severability

This provision is needed because, although IRS in section 457 of the code, has issued rules relating to deferred compensation plans they have not as yet issued guidelines, which will be forthcoming, and regulations defining such things as unforeseeable emergencies. A Deferred Compensation Plan is a highly desirable and beneficial fringe benefit for public employees and it is the wish of the legislature, as evidenced by Minnesota Statutes Section 352.96, that public employees participate in such a plan and that such a plan comply with Federal and State tax laws, regulations and rulings. The IRS is not as yet issuing rulings as to whether plans comply with the code. It is our understanding, however, that within the near future they will issue such rulings on plans submitted to them. Plans not meeting the requirements must be brought into compliance within 180 days after the date of notification by the Secretary of any inconsistancies. The plan is governed by Federal laws, IRS code, rules and regulations and State statutes. It is mandatory that the Executive Director have the authority to amend, by administrative order, any of the provisions of the plan which initially do not meet the requirements of the code, or, through changes in laws, statutes, codes or rules or regulations fall out of compliance with the plan because of the length of time it takes to produce and provide new documents needed for the plan, such as the plan document, the brochures, and the agreement forms.

D. Conflicts

To provide that the rules govern, in any event, of conflict between published statements on forms and brochures and these rules.

2MCAR S 3.5007 AMENDMENT OF THE PLAN

A. See explanation under 2MCAR S 3.5006 Item C., Severability

B. Prior Plan

This rule is needed to provide for an orderly continuation of the contributions by participants of the prior plan and continuation of those provisions which are not altered by the IRS code. The exceptions to the continuation of the prior agreement are necessary as the prior provisions conflict with the present provisions of the code in these respects.

2MCAR S 3.5008 APPLICABLE LAW

To establish the governing law and code in the administration of the plan.

Exhibit No. 7
File No. MSRS-80-601-GR
Date 4/5/80
RECEIVED
APR 3 1980
OFFICE OF HEARING EXAMINERS

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Services Division

Notice of Special Local Need Registration for Vitavax-25 DB

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on September 13, 1979 issued a Special Local Need Registration for Vitavax-25 DB EPA #400-115 manufactured by Uniroyal Chemical, 74 Amity Rd., Bethany, CT 06525.

Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide on small grains (wheats, oats and barley) to control smut, bunt and various seedling diseases which affect these small grains.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d); 18A.23; and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 79-0016) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
656 State Office Building
Saint Paul, Minnesota 55155
(612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has 30 days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15 for the purpose of revoking, amending, or upholding this registration.

September 13, 1979

Mark W. Seetin
Commissioner

Ethical Practices Board

Notice of Regular Meeting

The next regular meeting of the Ethical Practices Board will be held Friday, September 28, 1979, at 1:00 p.m., Room 14, State Office Building, St. Paul, MN.

Preliminary Agenda

1. Minutes (August 24, 1979)
2. Chairperson's Report
3. Wage and Salary Committee Report
4. Legal Counsel Report
5. Economic Interest Rules
6. Advisory Opinion — Communicating For Agriculture
7. Advisory Opinion — D.F.L. Voter Survey Plan
8. Public Financing Study
9. Executive Director's Report
   a. Financial Report
   b. Annual Report
10. Other Business

Minnesota State Retirement System

Notice of Intent to Solicit Outside Opinion Regarding Deferred Compensation Plan

Notice is hereby given that the Executive Director of the Minnesota State Retirement System is considering a revision of the Minnesota Deferred Compensation Plan rules in order to bring them into harmony with Section 457 of the Internal Revenue Code and Minn. Stat. § 352.96, increase the flexibility of the various options available to participants under the plan, regulate the allocation of administrative costs against the assets accumulated under the plan and repeal all existing rules.

The proposed rules are authorized by Minn. Stat. § 352.96 which authorize the Executive Director of Minnesota State Retirement System to establish rules and procedures to adopt and administer a deferred compensation plan for all public employees of the State of Minnesota and its governmental subdivisions.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

Mr. Paul L. Groschen
Executive Director
Minnesota State Retirement System
529 Jackson Street
St. Paul, Minnesota 55101

All statements of information and comment must be received by October 8, 1979. Any written material received by this date will become part of the record of any rules hearing held on this subject.

September 24, 1979

Paul L. Groschen
Executive Director

Office of the Secretary of State

Election and Legislative Manual Division

Notice of Vacancy in Multi-Member Agency—Application and Appointment Procedures

Notice is hereby given to the public that a vacancy has occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.1597, subd. 4. Application forms may be obtained at the Office of Secretary of State, 180 State Office Building, St. Paul, MN 55155; (612) 296-2805. **Application deadline is Tuesday, October 9, 1979.**

The Minnesota Great Lakes Commission has a vacancy open immediately for a public member for an indefinite term. The committee assists in the orderly, integrated and comprehensive development of water resources in the Great Lakes area. Members meet with representatives of other Great Lakes states to study matters dealing with water conservation, navigation, commerce, environmental quality, shoreline use, fisheries and wildlife. Meetings are held quarterly on weekdays. Members receive travel expenses and per diem. The governor is the appointing authority. For specific information contact Timothy Edman, (612) 224-5705.

The Medical Policy Directional Committee on Mental Health has a vacancy open immediately for a term to expire June 30, 1980. The member category is for a psychologist with research experience. The committee advises the Commissioner of Public Welfare on all phases of professional standards, including patient care, training of personnel, establishment of treatment programs, staffing, and records establishment to meet professional requirements in mental institutions of the state. The committee usually meets monthly on the first Friday of each month, 7:30 to 10:00 a.m. Members are reimbursed for expenses and receive $50 per diem. Appointing authority is the Commissioner of Public Welfare. For more information contact Dr. Young's office, Dept. of Public Welfare, Centennial Office Bldg., St. Paul, 55155; (612) 296-3058.

Department of Public Welfare

Social Services Division

Notice of Intent to Solicit Outside Opinion Concerning a Rule Amendment Relating to Minnesota Public Social Services

Notice is hereby given that the Minnesota Department of Public Welfare is considering editorial and policy changes in 12 MCAR § 2.160, Administration of Minnesota Public Social Services.

The Minnesota Department of Public Welfare is interested in soliciting comments on the adequacy of the present rule and suggestions for improvement.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

J. Philip Peterson
Service Administration Section
Department of Public Welfare
Centennial Office Building, Fourth Floor
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3970.

All statements of information and comment must be received by October 15, 1979. Any written material received by the Department shall become part of the hearing record.

Errata

Department of Public Welfare

1. At 4 S.R. 318 the effective date listed in the last sentence of the fourth and fifth paragraphs should be January 1, 1980, rather than January 1, 1979.

2. At 4 S.R. 334 the effective date listed in the last sentence of the first and second paragraph should be January 1, 1980, rather than January 1, 1979.

3. At 4 S.R. 343 the effective date listed in the last sentence of the third and fourth paragraph should be January 1, 1980, rather than January 1, 1979.

MSRS Exhibit No. 2
File No. MSR8-80-001-OD
Date 6/5/80

RECEIVED
MAY 8 1980
OFFICE OF HEARING EXAMINERS

Minnesota State Retirement System
Executive Director

In the Matter of the Proposed Repeal and Adoption of Rules Relating to the Minnesota State Deferred Compensation Plan

Notice of Hearing

A public hearing concerning the proposed repeal and adoption of rules will be held at the Hearing Examiners Office, Room 300, 1745 University Ave., St. Paul, Minnesota, 55104, on June 5, 1980, commencing at 9:00 a.m. The proposed repeal and adoption of rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Mn. 55104, telephone (612) 296-8108 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. SS 15.0411-15.0417 and 15.052, and by 9 MCAR SS 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the repeal and adoption of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

The proposed repeal and adoption of rules would repeal the rules governing the present Minnesota Deferred Compensation Plan and establish revised rules governing the Minnesota Deferred Compensation Plan as a restatement and continuation of the present Minnesota Deferred Compensation Plan.

The proposed rule will govern the eligibility to participate in the Plan, the method to enroll, the minimum and maximum deductions permitted, and the procedures to be followed to make changes in the amounts deducted, and to correct an error in the amount deducted.

The proposed rule provides for the records to be maintained, the responsibility of employer, ownership of the assets, valuation of the assets, charges to be assessed against the deduction for administration of the Plan, the type of investment accounts which may be selected by the participant for either past or future deferred compensation, the events under which distribution of the assets in the account may begin and the method and time of distribution.

The proposed rule goes on to provide a distribution in the event of an unforeseeable emergency or financial hardship, the designation of a beneficiary and provides for the non-assignability of the contract and that the deferred compensation monies cannot be attached.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. SS 352.96 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Paul L. Groschen, Executive Director, Minnesota State Retirement System, 529 Jackson Street, St. Paul, Mn 55101, telephone (612) 296-2761. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Mr. Groschen.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you must so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch 10A requres each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. SS 10A.01, subd. 11, (1979 Sept.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

April 4, 1980

Paul L Groschen

Paul L. Groschen,
Executive Director

MSRS Exhibit No. 1
File No. MSRS-80-001-GB
Date 6/5/80

STATE OF MINNESOTA

BEFORE PAUL L. GROSCHEN
EXECUTIVE DIRECTOR
OF THE
MINNESOTA STATE RETIREMENT SYSTEM

RECEIVED
MAY 8 1980
OFFICE OF HEARING EXAMINERS

ORDER FOR HEARING

In the matter of the Proposed Repeal and Adoption of Rules relating to the Minnesota Deferred Compensation Plan.
(2 MCAR SS 3.5001 thru 2 MCAR SS 3.5008)

To effectively implement the administration of Minn. Stat. S 352.96 (1978) and section 457 of the United States Internal Revenue Code, the Executive Director of the Minnesota State Retirement System deems it necessary to consider repeal and adoption of the proposed rules captioned above pursuant to the authority vested in me by Minn. Stat. S 352.96 (1978).

NOW, THEREFORE, IT IS ORDERED this 4th day of April, 1980, that a public hearing on the proposed rules captioned above be held in the Hearing Examiners Office, Room 300, 1745 University Ave., St. Paul, Minnesota 55104, June 5, 1980, commencing at 9:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota legislature, and shall be published in the State Register as required by statute.

STATE OF MINNESOTA
MINNESOTA STATE RETIREMENT SYSTEM

Paul L. Groschen

Paul L. Groschen
Executive Director

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA STATE RETIREMENT SYSTEM

IN THE MATTER OF THE PROPOSED REPEAL AND ADOPTION OF RULES OF THE EXECUTIVE DIRECTOR OF THE MINNESOTA STATE RETIREMENT SYSTEM RELATING TO THE MINNESOTA DEFERRED COMPENSATION PLAN.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 5, 1980 before George A. Beck, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Minnesota State Retirement System and;

WHEREAS, the Minnesota State Retirement System has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Minnesota State Retirement System has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Minnesota State Retirement System has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Minnesota State Retirement System has the responsibility of submitting the complete hearing record and the rules as adopted by the Minnesota Retirement System to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 24th day of July, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

DATE: July 24, 1980

FROM : DUANE R. HARVES DRH sh
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: IN THE MATTER OF THE PROPOSED REPEAL AND ADOPTION OF RULES OF THE EXECUTIVE DIRECTOR OF THE MINNESOTA STATE RETIREMENT SYSTEM RELATING TO THE MINNESOTA DEFERRED COMPENSATION PLAN. MSRS-80-001-GB

Enclosed is the Order of the Chief Hearing Examiner on the above-referenced rules. Also enclosed and returned to you are all of the documents submitted to this office with your letter of July 16, 1980.

sh
Encs.



STATE OF MINNESOTA
MINNESOTA STATE RETIREMENT SYSTEM

In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Assistant Attorney General Merwin Peterson, do hereby declare that I have examined the proposed rules and all related documents and that, based upon them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Merwin Peterson
Assistant Attorney General

Dated: 7/30/80

MINNESOTA STATE RETIREMENT SYSTEM
529 Jackson Street
Saint Paul, Minnesota 55101

Tel. 296-2761

DATE : July 30, 1980

FROM : Paul L. Groschen
Executive Director

SUBJECT: Rules relating to the
Minnesota Deferred Compensation Plan

Office Memorandum

Attorney General Warren Spannaus
Office of the Attorney General
Room 102, Capitol Building
Aurora Avenue
St. Paul, Minnesota 55155

Enclosed are the rules relating to the Minnesota State Deferred Compensation Plan and all required documents for your approval, in accordance with M.S. section 15.0412.

The persons who have requested to be notified when the rules are submitted to you have been so notified.

Paul L. Groschen

Paul L. Groschen

PLG:mg
Encl.

ATTORNEY GENERAL

PAUL L. GROSCHEN
Executive Director

August 7, 1980

JUDITH WEHRWEIN
Legal Assistant

296-4347

Minnesota State Deferred Compensation Plan Rules

No action has been taken by this office in regard to the above-referenced rule and I am returning the submitted file to you at this time.

I respectfully draw your attention to Atty Gen Rules 301-303 regarding submission of rules to the Attorney General for review as to form and legality. As you will note, agencies are required to submit the original and copies of the various documents. The file as submitted contained no copies.

Review of the rules will proceed promptly upon resubmission of a complete file.

Thank you for your attention to this matter and please feel free to call if you have any questions.

JW/bw

RECEIVED
JUL 16 1980
OFFICE OF HEARING
EXAMINERS

RULES AS PROPOSED (ALL NEW MATERIAL)

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2MCAR S 3.5001. Establishment and purpose of plan

A. Establishment of plan. This plan shall be known as the Minnesota Public Employees' Deferred Compensation Plan ("plan") and is hereby created in accordance with Minn. Stat. S 352.96 and section 457 of the United States Internal Revenue Code. This plan shall constitute a continuation of the Minnesota Deferred Compensation Plan, approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975.

B. Purpose of plan. The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until termination of employment, financial hardship or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

2MCAR S 3.5002. Definitions

A. Definitions. Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

1. "Accounting date" means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical in the discretion of the board, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

2. "Beneficiary" means the person or legal entity provided for by the plan to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

3. "Board" means the Minnesota State Board of Investment.

4. "Code" means the Internal Revenue Code of 1954, as amended from time to time, or any successor statute.

5. "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as taxable income for purposes of the code.

6. "Deferred compensation" means that portion of the participant's compensation which the participant and employer mutually agree to defer under this plan.

7. "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

   a. "Supplemental investment account" means the Minnesota Supplemental Retirement Fund as established by Minn. Stat. S S 11.18 and 11.19 and managed by the board.

   b. "Fixed and variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minn. Stat. S 352.96, Subd. 2.

8. "Director" means the executive director of the Minnesota State Retirement System.

9. "Employee" means:

   a. any individual receiving compensation for services from the State of Minnesota which shall include any elected official, appointed official, independent contractor, or employee of the State of Minnesota, including employees of departments, agencies and instrumentalities, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in the Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees, or

   b. any individual receiving compensation for services performed for a political subdivision of the state and shall include any elected official, appointed official, independent contractor or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan, enumerated in Minn. Stat. S 356.20, Subd. 2.

10. "Employer" means:

   a. the State of Minnesota, or

   b. a political subdivision of the State of Minnesota, or an agency or instrumentality of the State of Minnesota or its political subdivisions.

11. "Includable compensation" means the compensation remaining after any deferrals through this plan and/or any amount of compensation excluded from taxable income as a result of contributions made for the benefit of an employee under section 403(b) of the code.

12. "Normal retirement age" means the earliest of the following:

    a. attainment of eligibility by the participant to commence receiving normal retirement benefits from one of the retirement systems enumerated in Minn. Stat. S 356.20, Subd. 2, or other Minnesota public employee pension plan of which participant is a member.

    b. Age 65.

13. "Participant" means any individual who has enrolled in this plan as provided in 2MCAR S 3.5004 and has not had a complete distribution of his or her deferred compensation account.

14. "Pay period" means a regular accounting period established by the employer for measuring and paying compensation earned by employees.

15. "Plan" means the Minnesota Public Employee's Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

16. "Prior plan" means the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration November 24, 1975 and any plans established thereunder by political subdivisions of the State of Minnesota.

17. "Projected retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2MCAR S 3.5004 D. 2. Only one projected retirement date may be designated and is to be designated on a form approved by the director.

18. "Termination of service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; or such other form of permanent severance as may be provided by appropriate law, contract or rules and regulations. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a termination of service.

19. "Taxable year" means the calendar year, beginning January 1 and ending on December 31.

B. Gender and number. Except when otherwise indicated by the context, any masculine terminology therein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

2MCAR S 3.5003. Responsibilities of the director. The director has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The employer or the director on behalf of the employer may enter into a written agreement with each participant. Such written agreement and other application forms shall be in a form and manner as prescribed by the director and shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and such other information as the director deems necessary to administer the plan.

Pamphlets describing this plan and outlining the options and opportunities available shall be prepared under the direction of the director, and made available to eligible employees. Copies of the plan will be made available upon request. Individual account statements shall be made available to each participant at least annually.

2MCAR S 3.5004. Participation in the plan.

A. Eligibility. All employees who are receiving compensation on or after the date the plan becomes effective, and who have not revoked earlier participation pursuant to 2MCAR S 3.5004 F. during the most recent taxable year, shall be eligible to become participants in accordance with 2MCAR S 3.5004 B.

B. Enrollment. Any employee eligible to participate in accordance with 2MCAR S 3.5004 A. may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with 2MCAR S 3.5004 C. and D. The deferment will commence with the first full pay period following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

C. Minimum deferment. The minimum amount which may be deferred shall be ten dollars ($10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded.

D. Maximum deferment. The total amount of deferred compensation during any taxable year shall not exceed the limits provided in D. 1. and D. 2. of this rule.

1. 33-1/3% of includable compensation or $7,500 whichever is less; or

2. Each participant may designate a projected retirement date to be on or after normal retirement age which then shall be participant's normal retirement age under the plan. For each of three taxable years preceding his or her projected retirement date, a participant may defer an amount equal to the limits set forth in 2MCAR S 3.5004 D. 1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred. In no event, however, can the deferral exceed $15,000 for any taxable year.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable under Section 403(b) of the Internal Revenue Service Code, the contributions excludable under Section 403(b) reduce the maximums established in paragraphs D. 1. and D. 2. of this rule.

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions and other mandatory deductions.

E. Modifications to amount deferred. The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of 2MCAR S 3.5004 D. may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first full pay period following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in 2MCAR S 3.5004 F.) may be made each taxable year.

F. Revocation of deferral. Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a non-deferred basis will then be restored beginning with the first full pay period following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in 2MCAR S 3.5005. The participant may not again be eligible to defer compensation until the next taxable year.

G. Duration of election to defer compensation. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with 2MCAR S 3.5004 E., or revokes the deferred compensation in accordance with 2MCAR 3.5004 F.

H. Deferral adjustments.

1. Deduction exceeds pay period salary available

If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, state and federal income taxes, and any other deductions required by law, then no deduction for the plan will be made for such participant for such pay period.

2. Missed deductions and over-deductions

If a deferred compensation deduction is missed for any reason whatsoever, no adjustment shall be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded.

3. Change in pay period length

In the employee's application for participation in the plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer or the director acting for employer shall compute and have withheld from such employee's salary an equivalent whole dollar amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

4. Maximum deduction

The employer shall insure compliance with the maximum deferment set forth in 2MCAR S 3.5004 D. If the amount deducted exceeds the maximum deferment set forth in 2MCAR S 3.5004 D., the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded.

2MCAR S 3.5005. Participants' accounts, investments and distributions

A. Deferred compensation accounts and valuation.

1. Participants' accounts

An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under 2MCAR S 3.5005 E. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in 2MCAR S 3.5005 A. 4. and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to 2MCAR S 3.5005 C., credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan.

2. Financial responsibility of the employer

The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minn. Stat. S 352.96, Subd. 2, until distributed in accordance with 2MCAR S 3.5005 D., E. and F.

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

3. Accounting dates and investment fund valuation

The supplemental investment account is to be valued by the board as of each accounting date in accordance with the provisions of Minn. Stat. S S 11.18 and 11.19. Any withdrawals or distributions shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the account's value as of the accounting date.

The fixed and variable annuity account is to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board pursuant to Minn. Stat. S 352.96.

4. Administrative expense

Two percent (2%) shall be deducted each pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity for the change by the Legislative Auditor.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minn. Stat. S 352.96.

B. Unsecured general creditor. Title to, and beneficial ownership of any assets, whether in cash or investments which the employer may earmark to pay or measure any deferred compensation hereunder, shall at all time, remain as a part of the general assets of the employer. The participant and his beneficiary shall not have any property interest whatsoever in any specific asset of the employer on account of his election to defer any compensation under this plan. To the extent that any person acquires a right to receive payments from the employer under the terms of this plan, such right shall be no greater than the right of any unsecured general creditor of the employer.

C. Investment of funds.

1. Any compensation deferred by employees may be invested by the employer or by the director for the employer but there is no requirement to do so.

2. Investment options

The participant may select an investment preference from among the options provided in the deferred compensation account.

a. The supplemental investment account shall provide the following options: the income share account, the growth share account and the fixed return account.

b. The fixed and variable annuity account shall provide the following options: a fixed annuity and a variable annuity.

A participant may select any combination of these five (5) investment account preferences by specifying on the application the amount to be deferred under each investment preference. The amount to be deferred cannot be less than ten dollars ($10.00) per pay period per account selected.

3. Investment preference requests for future compensation

A participant shall, at the time of enrollment, make an investment preference request on an application provided for that purpose. Once made, an investment request shall continue for any deferments unless later changed by the participant.

A participant may, once in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first full pay period following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation

A participant may also, once in any taxable year, at the same time as a change is requested under 2MCAR S 3.5005 C.3., or in lieu of a change thereunder, change his or her investment preference request with respect to all previously deferred compensation. Such changes are limited to a change within the fixed and variable annuity account or within the supplemental investment account but not between the accounts and are also limited to transfers to fixed accounts only. These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2MCAR S 3.5004 E. and F. the month following the day on which one of the following events occurs:

1. Termination of service,

2. Death,

3. Unforeseeable emergency,

4. Delayed distribution date as provided in 2MCAR S 3.5005 F.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the method determined in accordance with MCAR S 3.5005 F.

1. A participant in the supplemental investment account may have deferred compensation distributed in one of the following methods:

   a. In a lump sum.

   b. In a lump sum purchase by the director of a fixed or variable annuity contract with the companies approved by the board pursuant to Minn. Stat. S 352.96, Subd. 2 which contract shall include the availability of the options set forth in 2MCAR S 3.5005 E. 2.

   c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months.

      The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten (10), then ten (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance.

2. A participant in the fixed and variable annuity account may have deferred compensation distributed in the form of monthly annuity payments. The annuity payments shall be based on one of the following methods:

   a. The life of the participant.

   b. The life of the participant or a period certain, whichever is greater.

   c. The joint lifetime of the participant and a named beneficiary.

   Notwithstanding any other rule to the contrary, if a fixed and variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum the month following a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under 2MCAR S 3.5005 H. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

F. Election of method and time of distribution. At any time prior to the date distributions are to commence (except for unforeseeable emergency distributions as provided in 2MCAR S 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed subject to the following rules:

1. A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.

   If a participant should die prior to the delayed distribution date, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant.

2. The distribution date or method of distribution may be changed at any time prior to distribution. Once payment has commenced, the distribution date or method of distribution may not be changed, except to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant.

3. Distribution may not begin prior to termination of service or death except for unforeseeable emergency distributions as provided in 2MCAR S 3.5005 G.

4. If no distribution date or method of distribution is elected, then a lump sum payment shall be made to the participant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment.

G. Unforeseeable emergency. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable emergency.

Examples of an unforeseeable emergency may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected and unreimbursed personal expense of a major nature that would not normally be budgetable; and the disability of the participant. Foreseeable personal expenditures normally budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute an "unforeseeable emergency.

Any participant desiring a distribution by reason of an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with 2MCAR S 3.5005 D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

H. Designation of beneficiary. A participant may designate a beneficiary to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee or dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minn. Stat. S 352.96 Subd. 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

I. Leave of absence. Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan.

2MCAR S 3.5006. Miscellaneous.

A. Nonassignability. The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, participant or beneficiary. An attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

B. Headings and subheadings. The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

C. Severability. If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby. If the Internal Revenue Service finds any of the provisions of this plan to be inconsistent with section 457 of the code or other regulations of the United States Treasury the director shall amend the provisions of this plan to bring them into compliance with the code or regulations.

D. Conflicts. In the event any form or other document used in administering the plan conflicts with the terms of the plan, the terms of the plan shall prevail.

2MCAR S 3.5007. Amendment of plan.

A. Amendment of plan. The director acting for the employer shall have the authority to propose amendments to this plan from time to time consistent with the provisions of Minn. Stat. S 352.96 and the code and regulations of the U.S. Treasury. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

B. Prior plan. This plan constitutes a continuation of the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975. All participants and any compensation deferred under the prior plan are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

1. All deferrals elected under the prior plan shall continue without further action as long as they do not exceed the limits in 2MCAR S 3.5004 D.

2. Any investment requests made under the prior plan shall continue to apply to any deferrals made under this plan in accordance with 2MCAR S 3.5005 C.

3. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2MCAR S. 3.5005 E. and F.

2MCAR S 3.5008. Applicable law. This plan shall be construed, administered and governed in all respects under and by the laws of the State of Minnesota, Minn. Stat. S 352.96, and section 457 of the code.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE RETIREMENT SYSTEM

IN THE MATTER OF THE PROPOSED REPEAL AND ADOPTION OF RULES OF THE EXECUTIVE DIRECTOR OF THE MINNESOTA STATE RETIREMENT SYSTEM RELATING TO THE MINNESOTA DEFERRED COMPENSATION PLAN.	ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, the Minnesota State Retirement System (hereinafter "MSRS") submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110; and

WHEREAS, on July 24, 1980, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the MSRS had met all requirements of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the MSRS subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Attorney General recommended to the MSRS that certain of the rules be amended; and

WHEREAS, the MSRS has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, the Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the MSRS has the responsibility of resubmitting the complete hearing record and the rules as adopted by the MSRS to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 21st day
of October, 1980.

DUANE R. HARVES
Chief Hearing Examiner

MSRS-80-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE RETIREMENT SYSTEM

IN THE MATTER OF THE PROPOSED REPEAL AND ADOPTION OF RULES OF THE EXECUTIVE DIRECTOR OF THE MINNESOTA STATE RETIREMENT SYSTEM RELATING TO THE MINNESOTA DEFERRED COMPENSATION PLAN.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, the Minnesota State Retirement System (hereinafter "MSRS") submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110; and

WHEREAS, on July 24, 1980, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the MSRS had met all requirements of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the MSRS subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, by memorandum of August 21, 1980, the Attorney General recommended to the MSRS that certain of the rules be amended, which amendments were found to be not substantial changes by Order of the Chief Hearing Examiner dated October 21, 1980; and

WHEREAS, the rules were resubmitted to the Attorney General and, by memorandum dated November 10, 1980, the Attorney General again recommended that certain of the rules be amended; and

WHEREAS, the MSRS has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, THE Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the MSRS has the responsibility of resubmitting the complete hearing record and the rules as adopted by the MSRS to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated: November 24, 1980.

DUANE R. HARVES
Chief Hearing Examiner

Our File #621

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

DATE: August 21, 1980

Attn: MERWIN PETERSON

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

The above-captioned rules have not been approved by this office for the following reasons:

1. The Rules as Proposed that were submitted to this office appear to be, in fact, labeled the Rules as Adopted. This error could easily be corrected by inserting "Adopted" for "Proposed" on the cover of these rules.

2. In both 2 MCAR sec. 3.5002 A.7.a. and 2 MCAR sec. 3.5005 A.3. the rules refer to Minn. Stat. 11.18 and 11.19. However, Minn. Laws 1980, Chapter 607, Article 14 included changes affecting such references. Minn. Stat. 11.18 and 11.19 were repealed. In Minn. Stat. 352.96 subd. 2a the reference to 11.18 is changed to 11A.17. Finally, "Minnesota Supplemental Retirement Fund," has been changed to the "Minnesota Supplemental Retirement Investment Fund." These changes should be noted in both sections noted above.

3. In 2 MCAR sec. 3.5003, the second paragraph states, "The employer or the director on behalf of the employer may enter into a written agreement with each participant." This language appears to allow the employer or director the discretion to enter into the agreement. However, no criteria are set forth stating when the employer or director may or may not enter into a written agreement. It would seem appropriate to replace the "may" with a "shall" in this instance if the director intended the language "may enter" in the rule to be applied as "shall enter."

4. The rules contain several references to the Internal Revenue Code of 1954. However, the record appears to contain no order from the Chief Hearing Examiner authorizing such incorporation by reference. Such an order should be obtained from the Chief Hearing Examiner prior to resubmittal to the Attorney General's Office.

5. Finally, in 2 MCAR sec. 3.5005 B. the third line, it appears that the word "time" should be "times."

Upon consideration of the issues raised in this memorandum, these rules may be resubmitted. Please be advised that the Cheif Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form that are made subsequent to his review be resubmitted to that office. At the

time of resubmission to this office, please insure that the original and two copies of the Amended Order Adopting and the Amended Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents. For administrative convenience, please designate the rules as resubmitted rules at the time of resubmission.

If you have any questions in regard to this memorandum, please contact me.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower

Office Memorandum

TO : H. THEODORE GRINDAL
Special Assistant
Attorney General

DATE: September 18, 1980

FROM : MERWIN PETERSON
Assistant Attorney General

PHONE: 6-7490

SUBJECT:

Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

Paul Groschen, Executive Director of the Minnesota State Retirement System (MSRS) asked that I review your determination in memorandum of August 21, 1980 Item 4, stating that before the rules could be approved by our office there must be an order of the Chief Hearing Examiner authorizing the incorporation by reference of a part of the federal code.

On reviewing the matter, it is my position that there is no need to incorporate the federal code by reference and indeed it would not be proper to do so. I therefore urge that you reconsider your determination. The reason for my conclusion is that the federal code authorizes and determines most of the provisions of the rules and therefore it is in force even if not incorporated by reference.

Prior to the initiation of the procedure to adopt rules, serious consideration was given to implementing the Deferred Compensation Plan without rules, because the federal code and state statute provided substantially all the legal authority necessary to implement the plan. However, attorneys for the Investment Board, Mike Miles and Bob Nardi, expressed the opinion that because Minn. Stat. § 352.96 authorizes contracts with outside financial agencies to provide desirable investment options for employees that cannot be provided by the MSRS, there was a need for rules in this area. It was felt by the Executive Director of MSRS and myself that because the options would be contained in a contract and not in the rules, there was no need for the rules. However, since the Investment Board was directly involved in and had the power of approval over the contract arrangements with the outside financial organizations, the Executive Director of the MSRS agreed that rules should be adopted.

RECEIVED
SEP 24 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

At this point the question arose, should only those plan provisions that could not be directly derived from the statute and code be put into the rules? It was decided, that it would be too confusing to the plan members to have both rules and non-rules make up the plan and therefore all the plan provisions should be adopted by rule. At the time this decision was made I believe that one of the attorneys for the Investment Board discussed this problem with your division and determined that even though ordinarily matters directly provided by state or federal statutes should not be made a part of the rules, in this case they should be in order to provide a complete plan. Thus, in the main, the rules only paraphrase the federal code which is the ultimate authority for the plan. Therefore, it is misleading to adopt the federal code by reference because this gives the impression that the authority for the plan rests in the rules themselves. Moreover, in the future, if the code is amended it would appear that MSRS is delegating its authority to the Federal government when in fact MSRS will be required to amend the rules to conform to the Code. It is therefore my view that the references to the federal code contained in the rules do not incorporate the federal code by reference, but merely references the federal code so that a plan member can find the ultimate authority for the various provisions.

The references to the code have the additional advantage of assuring the IRS that the plan is intended to meet the requirement of the federal code and therefore would be less likely to be disapproved by the IRS if there were any confusion over the meaning of the various plan provisions. This assurance would become very important if the federal code were to be amended because the existence of the code references would assure the IRS that MSRS intended to comply with the code even though there may be some period of time before rule amendments could be adopted by MSRS.

MP:co

cc: Paul Groschen
Mike Miles
Bob Nardi

MINNESOTA STATE RETIREMENT SYSTEM
529 Jackson Street
Saint Paul, Minnesota 55101

Tel. 296-2761

DATE : November 24, 1980

FROM : Paul L. Groschen
Executive Director

SUBJECT: In the Matter of the Proposed Repeal and Adoption of Rules Relating to the Minnesota Deferred Compensation Plan

Office Memorandum

H. Theodore Grindel
Special Assistant
Attorney General's Office
G25 Administration Building

RECEIVED
NOV 24 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

In accordance with your memos of August 21 and November 10, (copies attached) I amended the rules as suggested. I also issued an amended order adopting the amended rules and re-submitted them to the Chief Hearings Officer for review.

Except for those documents which were retained by you, I hereby resubmit three copies of the amended adopted rules, and of all other documents, for your review and approval.

Paul L. Groschen
Executive Director

PLG:mg
encl.

OFFICERS
Paul L. Groschen, Executive Director
Assistant Directors
Douglas Mewhorter
Warren D. Dreyer

MINNESOTA STATE RETIREMENT SYSTEM

529 Jackson at 10th Street St. Paul, Minnesota 55101
Tel. (612) 296-2761

BOARD OF DIRECTORS
Elected
Francis Hage, Chairman
Department of Natural Resources
Carolyn Anderson, Vice Chairwoman
University of Minnesota
Bernard O. Weber
Department of Transportation
Joseph J. Bright
Retired
Karl W. Christey
Department of Public Safety
Janet B. Humphrey
Department of Transportation
Richard G. Ryan
Metropolitan Transit Comm.
Appointed
Lieutenant Governor

Lyle Farmer, St. Paul

Ernest Thomsen, White Bear Lake

No.

November 18, 1980

Mr. Duane R. Harves
Chief Hearing Examiner
Office of Administrative Hearings
Room 300, 1745 University Avenue
Saint Paul, Minnesota 55104

RE: In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director Relating to the Minnesota Deferred Compensation Plan.
Docket No. MSRS-80-001-GB.

Dear Mr. Harves:

Enclosed is another memo regarding the approval of the above cited rules from H. Theodore Grindal of the Attorney General's office dated November 10, 1980. The Attorney General's office continues to have problems with the rules in connection with citing the I.R.S. code. The best solution was to delete all reference in the rules to the Code. Reference in the rules to the Code is unnecessary, as M.S. Section 352.96, which is the governing statute, requires that the rules be in compliance with the Code. In his leter, Mr. Grindal overlooked rule 2MCAR 3.5006C, which also references the Code. Under the above rationale, this section is not needed and is deleted.

Enclosed also is an amended order adopting the amended rules and a copy of the rules showing the recent amendments.

I, therefore, again request your review and approval. If you need additional documentation, please let me know.
Sincerely,

Paul L. Groschen
Executive Director

PLG:mg
encl.

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ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

DATE: 11/10/80

Attn: MERWIN PETERSON

FROM : H. THEODORE GRINDAL
Special Assistant
Attorney General

PHONE: 7-3471



SUBJECT: In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

The above-captioned rules have not been approved by this office for the following reasons:

1. In 2 MCAR § 3.5001 A., line three, and in 2 MCAR § 3.5007 A., lines three and four and in 2 MCAR § 3.5008, line three, the references to the "Code" or "Internal Revenue Code" may be omitted. The authorizing statute, Minn. Stat. § 352.96 incorporates general references to the Code because the state law must be in compliance with it. Therefore, these three references may be deleted.

2. In 2 MCAR § 3.5004 D. 2., and in 2 MCAR 3.5002 A. 11., the reference to Section 403 (b) of the Internal Revenue Code must provide additional information for it to be appropriate.

This section appears too brief for incorporation by reference according to our office's review of this section of the Code. Therefore, the Code language must be paraphrased or the section must be reprinted in the rule.

3. Finally, in 2 MCAR § 3.5002 A. 4. and 5., these definitions create an unlawful delegation of power to the Federal government according to Wallace v. Com. of Taxation, 184 N.W. 2d 588 (1971). The "Code" definition should specify the Code as it exists at a particular point in time, such as when this rule becomes law. This could be accomplished by incorporation by reference. The other definition of "Compensation" could reference certain sections of the Code that would be defined as compensation or income.

Upon consideration of the issues raised in this memorandum, these rules may be resubmitted to our office. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form made subsequent to his review be resubmitted to that office. At the time of resubmission to this office, please insure that the original and two copies of the Amended Order Adopting, and the amended Rules as Adopted are submitted to us. They are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents for administrative convenience. Please designate the rules as resubmitted rules at the time of resubmission.

If you have any questions in regard to this memorandum, please contact me.

HTG/b
Encl.

Our File #621

To: Paul L. Groschen
Executive Director
Minnesota State Retirement System

Attn: Merwin Peterson

From: H. Theodore Grindal
Special Assistant
Attorney General

Re: In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan

The above-captioned rules have not been approved by this office for the following reasons:

1. In 2 MCAR sec. 3.5001 A. line three, in 2 MCAR sec. 3.5007 A. line three and four and 2 MCAR sec. 3.5008 line three, the references to the "Code" or "Internal Revenue Code" may be omitted. The authorizing statute Minn. Stat. sec. 352.96 incorporates general references to the Code because the state law must be in compliance with it. Therefore, these three references may be deleted.
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Our office is aware that there are often revisions of the Internal Revenue Code. One should consider using the non-controversial rulemaking procedure to revise these rules when appropriate. This process would take no more than six weeks, yet keep the rules up to date with any Internal Revenue Code amendments.

Upon consideration of the issues raised in this memorandum, these rules may be resubmitted to our office. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form made subsequent to his review be resubmitted to that office. At the time of resubmission to this office, please ensure that the original and two copies of the Amended Order Adopting

and the amended Rules as Adopted are submitted to us. They are necessary fo filing with the Secretary of State. This office has retained copies of all other jurisdictional documents for administrative convenience, Please designate the rules as resubmitted rules at the time of resubmission.

If you have any questions in regard to this memorandum, please contact me.

HTG
OK
11/12/80

ATTORNEY GENERAL

PAUL L. GROSCHEN
Executive Director
Minnesota State Retirement System

Attn: MERWIN PETERSON

H. THEODORE GRINDAL
Special Assistant
Attorney General

In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan.

The above-captioned rules have not been approved by this office for the following reasons:

1. In 2 MCAR § 3.5001 A., line three, and in 2 MCAR § 3.5007 A., lines three and four and in 2 MCAR § 3.5008, line three, the references to the "Code" or "Internal Revenue Code" may be omitted. The authorizing statute, Minn. Stat. § 352.96 incorporates general references to the Code because the state law must be in compliance with it. Therefore, these three references may be deleted.

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This section appears too brief for incorporation by reference according to our office's review of this section of the Code. Therefore, the Code language must be paraphrased or the section must be reprinted in the rule.

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omit

Our office is aware that there are often revisions of the Internal Revenue Code. One should consider using the noncontroversial rulemaking procedure to revise these rules when appropriate. This process would take no more than six weeks, yet keep the rules up to date with any Internal Revenue Code amendments.

Upon consideration of the issues raised in this memorandum, these rules may be resubmitted to our office. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form made subsequent to his review be resubmitted to that office. At the time of resubmission to this office, please insure that the original and two copies of the Amended Order Adopting, and the amended Rules as Adopted are submitted to us. They are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents for administrative convenience. Please designate the rules as resubmitted rules at the time of resubmission.

If you have any questions in regard to this memorandum, please contact me.

HTG/b
Encl.

DRAFT

Our File #1621

TO: Paul L. Groschen
Executive Director
Minnesota State Retirement System

Attn: Merwin Peterson

FROM: H. Theodore Grindal
Special Assistant
Attorney General

RE: In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director of the Minnesota State Retirement System Relating to the Minnesota Deferred Compensation Plan

The above-captioned rules have not been approved by this office for the following reason:

These rules contain seven specific references to the Internal Revenue Code of 1954. The references do not contain language from the code itself. If in fact the references in the code would be less than 3,000 words or five pages published in the State Register, they could be printed within the content of the rules. If a section of the code would take more space then that, one would then need to incorporate by reference particular sections of the I.R.C. The record submitted to our office contains no order from the Chief Hearing Examiner authorizing such incorporation by reference.

An individual reading these rules would need to know what the particular Internal Revenue Code provisions were and meant to fully understand the rule. Therefore, the references to the code are substantive and not merely informational. From past instances, our office has required an Order incorporating by reference in these situations.

I am aware that there are often revisions to the Internal Revenue Code and that this could create some problems for these rules. I would suggest that if this was difficulty, one could plan on using the non-controversial rulemaking procedure to revise the rules at appropriate times. This process would take no more than six weeks and keep the rules in line with any Internal Revenue Code amendments.

Upon consideration of the issue raised in this memorandum, these rules may be resubmitted to our office. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form that are made subsequent to his review, be resubmitted to that office. At the time of resubmission to this office, please ensure that the original

and two copies of the amended Order Adopting and the amended Rules as Adopted are submitted to us. They are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents for administrative convenience, please designate the rules as resubmitted rules at the time of resubmission.

If you have any questions in regard to this memorandum, please contact me.

HTG:mb

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

September 9, 1980

RECEIVED
SEP 11 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Paul L. Groschen
Executive Director
Minnesota State Retirement System
529 Jackson Street
St. Paul, Minnesota 55101

Re: Our File: MSRS-80-001-GB In the Matter of the Proposed Repeal and Adoption of Rules of the Executive Director Relating to the Minnesota Deferred Compensation Plan.

Dear Mr. Groschen:

Receipt is herewith acknowledged of your letter of September 8, 1980, requesting my review of the changes in your rules which were required by the Attorney General. Your letter also requested the Chief Hearing Examiner's approval for the incorporation by reference of the Internal Revenue Code of 1954.

Minn. Stat. § 15.0412, subd. 4a, states: "With the approval of the Chief Hearing Examiner, the agency may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons. The Chief Hearing Examiner shall not approve incorporation by reference of federal law or rule or other materials which are less than 3,000 words in length or which would require less than five pages of publication in the State Register."

The procedural rules of the Office of Administrative Hearings relating to rulemaking includes the following rule numbered 9 MCAR § 2.108: "When an agency desires approval of the Chief Hearing Examiner to incorporate certain materials by reference in its rules, such approval must be obtained prior to the publication of the proposed rules in the State Register. The agency shall submit its request in writing and shall include with the request, the materials sought to be incorporated and shall further indicate to the Chief Hearing Examiner where the materials are conveniently available for viewing, copying and acquisition

by interested persons. The Chief Hearing Examiner shall have ten working days to approve or disapprove the request."

In your submission of September 8, 1980, you included a copy of Section 457 of the Internal Revenue Code. That section does not exceed 3,000 words nor would it exceed five printed pages in the State Register. Thus, that section taken alone, would not be eligible for incorporation by reference under the Administrative Procedure Act.

However, a very brief review of your rules indicates that there are references to other sections of the Internal Revenue Code within the rules. Thus, the portions of the Internal Revenue Code actually incorporated by reference into your rules may very well exceed the 3,000 word or five printed pages "threshold" requirement. However, without the Code before me, I am unable to make such a determination.

In your Rule 2 MCAR § 3.5002.A.4., the rule reads as follows: "'Code' means the Internal Revenue Code of 1954, as amended from time to time, or any successor statute." This definition appears to attempt to incorporate into your rules, by reference, amendments to the Internal Revenue Code which have not as yet been adopted. Therefore, it will be extremely difficult, if not impossible, for me to make a determination as to the length of the materials sought to be incorporated or their availability for viewing, copying and acquisition. Another way of looking at this definition is that it may very well be an unlawful delegation of authority to the federal government by the MSRS. Normally, such delegations are not legally allowable. However, if you can document authority for allowing such delegation, I will re-review the filing.

I am returning your original file in this matter, keeping only your letter of September 8th and the letter of Special Assistant Attorney General H. Theodore Grindal disapproving your rules as previously submitted to him. I will be happy to review all of the items upon further submission.

Yours very truly,

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

Telephone: 612/296-8100

DRH:sh
Enc.
cc: Merwin Peterson, Assistant Attorney General
H. Theodore Grindal, Special Assistant Attorney General

Our File #621

Permanent Rule_____

Temporary Rule_____

Resubmitted 10/29
Due 11/8

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/30 DUE DATE 8/19 ? 8/21

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved_____ Date Sent Back to Agency_____

---

1. Rules as Adopted ✓ ?
2. Rules as Proposed ✓ ? but see SR 4.21.80
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 6.5.80
   Sufficiency ✓
6. Secretary of State's List ✓ copy not submitted but see 7,8,9 below (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓ 5.1.80
10. Publication in State Register ✓ _____
    At least 30 days prior to hearing ✓ 4.21.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable ?
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A