

## Objective II Outline

This outline sets forth the text from each of the slides in the section labeled “Objective II” in the power point considered at the meeting of the work group on November 14, 2018, specifically slides 33 through 45. This text is italicized.

In addition to the text from the power point, this outline incorporates changes and issues discussed at the meeting, which are **highlighted in yellow**. If there is no highlighted text inserted for a given slide, the group accepted the slide as is, for inclusion in proposed legislation.

### Slide 33: *Objective II*

*Propose legislation alternatives regarding disposition of surplus assets upon plan termination or relief association dissolution*

### Slide 34: *A little more background information*

*Relief Association ≠ Retirement Plan*

*The relief association sponsors the retirement plan and they are separate legal entities:*

- *The relief association is a nonprofit corporation.*
- *The retirement plan is a qualified retirement plan.*

*Both are subject to state and federal law, but the laws governing relief associations are different than the laws governing retirement plans.*

*Chapters 424A and 424B could be amended to better distinguish one from the other.*

### Slide 35: *Current statutes*

1. *Section 424B.20 and .21 address plan termination and dissolution of the relief association, but important issues not addressed.*

### Slides 36-37: *Minnesota law on “Dissolution without Consolidation” (Section 424B.20)*

*This statute applies in two situations:*

- *When the fire department dissolves or is eliminated by the municipality or firefighting corporation.  
Example: A municipality decides to contract with another municipality to provide firefighting services and eliminates its fire department. Without active firefighters, the relief association may decide to terminate the pension plan and dissolve the relief association.*
- *When the relief association is dissolved or eliminated with municipal approval, but the fire department is not dissolved or eliminated.*

*Statute does not address:*

- *Fire department is dissolved but the relief association does not want to dissolve or terminate its pension plan;*
- *Termination of the pension plan where fire department is ongoing and relief association is ongoing (would this ever happen?);*
- *Dissolution of the relief association and its pension plan without municipal approval;*

- *Fire department, relief association, and pension plan are ongoing, but the municipality has terminated the services of all non-career firefighters and wants the relief association to dissolve and the pension plan to be terminated. (Example: Maplewood)*

The work group discussed these slides and there appeared to be consensus about adding these to Section 424B.20, subdivision 1:

- Dissolution will occur automatically, if there are no longer any active firefighters, which might occur if the municipality terminates the services of all non-career firefighters (example: Maplewood).
- Dissolution will occur automatically if there have been no reports filed with the State Auditor for two years and so the relief association has not been getting fire state aid (example: Arrowhead).

Staff suggests amending Section 424B.20, subdivision 1. to state as follows:

*"This section applies if the fire department associated with a volunteer firefighters relief association is dissolved or eliminated by action of the governing body of the municipality in which the fire department was located or by the independent nonprofit firefighting corporation, whichever applies, and no consolidation with another volunteer firefighters relief association under sections 424B.01 to 424B.10 is sought, or if a volunteer firefighters relief association is dissolved or eliminated with municipal approval, but the fire department associated with the volunteer firefighters relief association is not dissolved or eliminated, and no consolidation with another volunteer firefighters relief association under sections 424B.01 to 424B.10 is applicable."*

Staff suggests adding a new subdivision 1a to Section 424B.20:

*"A volunteer firefighters relief association must be dissolved or eliminated following the procedure set forth in this section if:*

- (a) the fire department with which the relief association is affiliated no longer has any non-career firefighters and there is no affiliated independent nonprofit firefighting corporation; or*
- (b) the relief association has not filed reports with the Office of the State Auditor to be eligible for fire state aid or supplemental state aid for the preceding two years."*

#### **Slides 38-40: Dissolution Procedures (Section 424B.20, subdivisions 2-5)**

*Current law requires the relief association board to:*

- 1. Calculate assets, accounts payable, pension benefit liabilities;*
- 2. Liquidate enough special fund assets to pay "legal obligations;"*
- 3. Prepare a schedule of firefighters with each firefighter's pension amount, service, and pension payment date;*
- 4. Transfer remaining assets to the municipality for deposit into a trust that is invested in compliance with 424A.095 (same statute that governs investment of the special fund)*

OR

*Purchase annuity contracts that will pay out pension benefits at retirement age (section 424B.21)\*;*

*\* (Consider legislation to revise the last sentence of 424B.21, which requires title to annuity contracts to be transferred to the trust. This seems to be a drafting error, since a trust is not necessary when annuity contracts are purchased. Title to annuity contracts should instead be required to be transferred to the municipality.)*

The work group appeared to reach consensus on amending the statute to permit the relief association to make distributions to all firefighters immediately (with option to elect a rollover), without having to wait until the firefighter reaches age 50. Further discussion needed as to whether immediate

distribution (with rollover option) should be required or whether this should only be added to the statute as an option, thereby retaining the current statutory language that provides for the transfer of assets to the municipality for distribution as firefighters reach age 50 or to an annuity provider that will distribute benefits as firefighters reach age 50.

If the annuity option is retained, staff continues to believe a technical change is necessary, as described in the parentheses, at the \*, in slide 39 (also included above).

5. *Transfer the records of the relief association to the municipality; and*
6. *Notify the Commissioner of Revenue, State Auditor, and Secretary of State within 30 days of the dissolution.*

#### **Slide 41: Transfer of Surplus to Municipality**

*After the municipality pays out all pension benefits according to the schedule, "any remaining assets in the trust fund cancel to the general fund of the municipality." (424B.20, subd. 4(b))*

#### **Slides 42-45: Proposed legislation alternatives**

*Amend Section 424B.20, subdivision 4a, to permit the board of trustees to take actions to reduce the surplus:*

- *Board could reduce surplus by approving an increase in the lump sum amount and legislation could provide that the final lump sum amount is limited only by the available surplus and federal limits. (See hand-out, "Applicable Federal Law".)*

The work group appeared to reach consensus that the law (Section 424B.20) should be amended to allow the relief association to increase the benefit level, even beyond the current \$10,000 maximum, to reduce the surplus or zero it out. This would need to be approved by resolution of the board and would not require municipal approval, even though it is a bylaws amendment. The proposed legislation would permit the board to designate which firefighters (i.e., only actives? Also deferred, deferred who don't have five years of service, recent retirees, inactive?) This law change would alleviate any concern about whether the municipality could terminate the services of non-career firefighters before the effective date of a benefit level increase.

- *Board could reduce surplus by providing retiree medical coverage (more research on this topic will be necessary to determine applicable law and any other concerns).*

*Once actions are taken to reduce the surplus (per previous slide), legislation could change who receives the surplus.*

*Alternatives:*

- *Work group previously decided:*
  - *None of the surplus should go to the state, and*
  - *Probably not all of the surplus should go to the municipality (as required by current law)*
- *Only to the firefighters?*
- *Shared between municipality and firefighters?*
  - *Even 50-50 split?*
  - *Take into account contributions by the municipality? (See slides 29 and 30 for allocation methods.)*
  - *Any difference if required versus voluntary contributions? How many years back?*

The work group appeared to reach consensus on the following:

- *The law enacted in 2018 that applies to Plymouth and three other relief associations and that requires any surplus upon dissolution or termination of the relief association to go to the State's general fund should be repealed. (The law is Section 424B.20, subdivision 4a.)*
- *The law that requires any surplus to go to the municipality (section 424B.20, subdivision 4) should be amended to require agreement between the municipality and the relief association on what to do with*

the surplus. If any surplus goes to the municipality, the law should require that the surplus be used by the municipality for any of the following:

- Contributions to PERA Police and Fire Plan for firefighters;
- Fire equipment
- Fire department

The work group discussed, but consensus may still be needed, that if agreement cannot be reached between the relief association and the municipality by the end of the 6th month after the conversion effective date(?) as to disposition of the surplus, the surplus will go to the state.

*One necessary change:*

- *Add provisions to address what happens when a municipality terminates the employment of all its non-career firefighters (Maplewood)*
  - *Federal tax law requires the relief association pension plan to consider that a “partial termination” of the plan. (See hand-out, “Applicable Federal Law”.)*
  - *“Partial termination” requires full vesting of all affected firefighters.*
  - *Proposed legislation could incorporate this federal requirement so it is known.*

Staff continues to believe this amendment is necessary, except in the case of relief associations that do not pay their non-career firefighters any compensation (neither per hour or per call).

*Other possible changes:*

- *Require automatic dissolution of the relief association and termination of the pension plan?*
- *Allow a relief association to dissolve or a pension plan to be terminated without municipal approval?*

*These changes were discussed and are noted on page 2.*

- *Housekeeping changes to have separate statutes and procedures for dissolution of the relief association and termination of the retirement plan?*