Legislative Commission on Pensions and Retirement

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TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Chad Burkitt, Analyst

DATE: March 19, 2019

RE: H.F. xxxx; S.F. xxxx (LCPR19-030): Volunteer Firefighters; Allowing for the disbursement and allocation of fire state aid by municipalities

Background and Overview

H.F. xxxx; S.F. xxxx (LCPR19-030) is an updated version of the draft legislation for the Fire State Aid Work Group report that was circulated at the March 12, 2019, Commission meeting.

Under current law, municipalities are only permitted to disburse fire state aid to volunteer fire fighters covered by either a volunteer firefighters relief association (VFRA) or the Public Employees Retirement Association Statewide Volunteer Firefighter Plan (PERA SVF) The recommendation of the work group is to allow municipalities to split their allotted fire state aid between their volunteer firefighters and their full-time firefighters covered by the Public Employees Police and Fire Retirement Plan (PERA P&F). with combination fire departments. As recommended, the bill allows for splitting the aid only where there is an agreement between the volunteer firefighters and the municipality and where there a combination fire department. A combination fire department is a fire department that has both fulltime and part time or volunteer firefighters. For more background information, see the Fire State Aid Work Group report.

Section by Section Summary

Section 1: Modifying directions for aid disbursements. Section 1 modifies Minn. Stat. § 69.031, Subd. 5, to allow the allocation and disbursement arrangements under sections 2 and 3 of the bill. It also makes some organizational changes to improve readability and allow for easy conformity with H.F. 2169 (Marquart); S.F. 2555 (Chamberlain), which recodifies and reorganizes Chapter 69.

Section 2: Establishing a method for allocating fire state aid between PERA SVF and PERA P&F. Under current law, fire state aid for a municipality that has volunteer firefighters covered by PERA SVF is disbursed by the Department of Revenue to PERA. PERA then credits the aid to the municipality's account.

Section 2 establishes a new section in Chapter 353G that allows PERA to allocate that money on behalf of municipalities with combination fire departments if there is an agreement between the firefighters and the municipality. The firefighters consent to the agreement through the signatures of the majority of the active members affiliated with the municipality. The agreement specifies the amount or percentage of fire state aid that goes to PERA SVF. The remaining aid then goes to PERA P&F as a credit against future employee contributions. Any excess PERA P&F aid reverts to PERA SVF at the end of each fiscal year. The section also provides for the modification of the agreements.

Section 3: Establishing a method for disbursing fire state aid to VFRAs and PERA P&F. Under current law, fire state aid for a municipality with volunteer firefighters covered by a VFRA is disbursed to the municipality. The municipality is then required to transmit all of the fire state aid to the VFRA within 30 days.

Section 3 establishes a new section in Chapter 424A that allows municipalities with combination fire departments to disburse a portion of their state aid for the purpose of paying the employer contributions of fulltime firefighters to PERA P&F. Municipalities are only permitted to do this only if the affiliated VFRA has entered into an agreement with the municipality.

The agreement requires the approval by a majority of the board of trustees for the VFRA and the governing body of the municipality. The agreement must also state the amount or percentage of fire state aid that will be disbursed to the VFRA. The remaining aid must be disbursed by the municipality to pay for fulltime firefighter employer contributions to the PERA P&F fund. Any unexpended fire state aid must be transmitted to the VFRA at the end of the fiscal year.

Section 3 also provides for the modification or termination of an agreement. Municipalities are required to file documentation of the agreement with the office of the state auditor and may become temporarily ineligible for future state aid if they fail to comply with the reporting requirements.

Discussion and Analysis

The bill raises the following policy issues:

1. Sufficient incentive to agree. The issue is whether there is sufficient incentive for the parties to come to an agreement. In some cases, municipalities may be able to increase benefits or otherwise incentivize volunteer firefighters to agree to a different disbursement of fire state aid.
2. Fiduciary duty of the VFRA boards. The boards of trustees for the VFRAs are subject to the standard of care in Section 11A.09, which requires them to "act in good faith and […] exercise that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs." VFRA boards are also subject to the standard of care in Section 356A.04, and may be subject to the standard of care in Section 317A.251. As a result, it is likely that a VFRA board could be liable for a decision to enter into an agreement with a city, if the agreement or the board's decision making process violates the standards expressed in the sections above. Under the bill, VFRA Boards are permitted to submit their decision to enter into an aid disbursement agreement to their membership. This allows the board to remove their fiduciary liability for entering into the agreement.

3. Independent Nonprofit Firefighting Corporations. Sections 1 and 2 of the bill make allowances for independent nonprofit firefighting corporations, which act in the place of municipalities as an employer for volunteer firefighters, but do not have authority to disburse or receive fire state aid under current law. Section 3 potentially requires a municipality that is not a party to the aid disbursement agreement made between the volunteer firefighters and the independent nonprofit firefighting corporation to interpret the agreement and disburse the aid accordingly. The issue is whether such municipalities are capable of administering the agreements and whether they should have the burden of administration.