

**SF 2056 (Rosen); HF 2145 (Nelson, M.):
Volunteer Firefighter Relief Associations;
Recommendations of the State Auditor's Volunteer Fire
Relief Association Working Group**

Prepared by: Susan Lenczewski

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Introduction

- Affected Plans:** Volunteer Firefighter Relief Associations
- Laws Amended:** Various sections in Minnesota Statutes, Chapter 424A
- Brief Description:** The bill contains the recommendations of the State Auditor's Volunteer Fire Relief Association Working Group, including the following:
- Changes to combined service pensions, so that a firefighter will be able to have service credit combined for vesting purposes only for the pension benefit in the second relief association and no longer for the pension benefit in the first relief association;
 - Clarifies language in the statute requiring the crediting of net investment earnings to deferred member accounts in defined contribution relief associations and provides an additional year to amend bylaws to conform with changes enacted in 2020;
 - Permits relief associations to eliminate service credit from their books for former firefighters who left active service before vesting in their pension benefit and do not return to active service within five years; and
 - Permits a supplemental benefit to be paid for each distribution from a relief association, subject to a separate \$1,000 maximum, and thereby authorizes the Department of Revenue to reimburse relief associations and the PERA Statewide Volunteer Firefighter Plan for these benefits.
- Attachment:** [Fiscal note dated March 16, 2020](#) (relevant only to Section 9 of the bill)

Background

SF 2056 (Rosen); HF 2145 (Nelson, M.) is legislation recommended by the State Auditor's Volunteer Fire Relief Association Working Group. This 13-member group consists of officers of relief associations from

around the state, two representatives from municipalities, one representative each from the Minnesota State Fire Department Association and the Minnesota State Fire Chiefs Association, and the State Auditor. The group met six times beginning in October 2020 through January 2021.

The Office of the State Auditor has convened meetings of the working group for many years to discuss changes to the statutes governing volunteer firefighter relief associations. The group has no official status in that it was not established by statute. The group's purpose statement is the following:

To identify and work through current and pressing relief association issues while maintaining effective and efficient Office of the State Auditor oversight. We will do this by bringing together the major volunteer fire relief association stakeholders to develop relationships, facilitate communication, discuss relief association issues and make the Pension Process easier and more effective. The ultimate goal is to help volunteer fire relief association plans be successful.

Commission staff worked closely with the Pension Division Director to ensure the proposed statutory changes accurately reflect the intent of working group and are as clear and concise as possible.

Portions of this summary draw from the summaries prepared by the Auditor and presented to the working group when the topic was considered by the group at one of its meetings.

Section-by-Section Summary

Section 1: Definition of "municipal clerk"

Minnesota Statutes, Section 424A.014, requires the "municipal clerk" or "clerk-treasurer" to sign the required annual financial report or financial statements of the volunteer firefighter relief association affiliated with the municipality. Municipalities may not have a municipal clerk or may wish to designate someone other than the municipal clerk, such as the finance director, to sign these annual reports.

Until 2019, the financial reporting requirements for relief associations were set forth in Chapter 69, which had a definition of "municipal clerk" that provided municipalities with the desired flexibility in designating the official responsibility for signing annual financial reports. When Chapter 69 was recodified in 2019, the fire state aid sections were moved to new Chapter 477B and the financial reporting requirements were moved to Chapter 424A. The definition of "municipal clerk" was transferred to Chapter 477B along with the fire state aid sections, leaving Chapter 424A without a definition of that term.

Section 1 of the bill adds a definition of "municipal clerk" to the definitions section of Chapter 424A, as subdivision 2b of section 424A.001. It is similar, but not identical to the definition at Section 477B.01, subdivision 9.

Too late in the process for this bill, and in the course of drafting other legislation, we discovered that the "Definitions" section of Chapter 477B states, in subdivision 1:

*Scope. Unless the language or context clearly indicates that a different meaning is intended, the following words and terms, for the purposes of this chapter and chapters 423A and **424A**, have the meanings given to them.*

This means that definitions in Chapter 477B apply, not only in Chapter 477B, but also in Chapter 424A. Adding a definition to Chapter 424A that is different than the definition of the same term in Chapter 477B creates a conflict and confusion for relief associations and municipalities having to comply with a requirement. Before adding a new definition to Chapter 424A that is also defined in Chapter 477B, the conflict should have been resolved in some way. Typically, the addition of the phrase "notwithstanding any contrary law" or something to that effect, helps resolve such conflicts.

We note that this is not the only conflict between these two "Definitions" sections. "Fire department" and "municipality" are two additional terms that are defined in both Chapters 477B and 424A but are defined differently. Commission staff will work with the Revisor's Office and, if necessary, the Department of Revenue and the State Auditor's Office, to resolve these conflicts.

This section is effective the day following final enactment.

Sections 2 and 3: Financial report and audit requirements

Relief associations are required to file annual financial information that differs depending on whether the relief association had assets or liabilities of at least \$500,000 in any prior year or has always had assets and liabilities of less than \$500,000. This requirement appears in Section 424A.014, subdivisions 1 and 2.

Sections 2 and 3 of the bill revise language in these subdivisions to clarify the application of the \$500,000 threshold and that "financial report" and "audited financial statements" are two separate documents. Other language is added or revised to provide further clarity and consistent terminology.

These sections are effective January 1, 2022.

Section 4: Combined service pensions

Under Section 424A.015, subdivision 7, relief associations have authority to pay a combined service pension to members with service in more than one relief association. A combined service pension means that years of service among multiple relief associations are combined for purposes of determining a firefighter's vesting percentage. The vesting schedule that applies to a firefighter's benefit is set forth in the relief association bylaws, which are permitted by Sections 424A.016 and 424A.017 to require as few as 5 years (but no more than 40% vested at 5 years) and as many as 20 years to reach 100% vested.

Relief associations may authorize combined service pensions but are not required to do so. Upon retirement, a firefighter may elect a combined service pension from each relief association in which the firefighter has accrued at least one year of service credit if the bylaws of each participating relief association permit combined service pensions. The firefighter is eligible to receive a lump sum or, in the case of the few monthly relief associations, a monthly annuity, from each participating relief association

that takes into account years of service with all participating relief associations in calculating the firefighter's vesting percentage. Service is not combined in calculating the amount of the benefit—the amount of the benefit to be paid from each relief association is calculated using only service accrued with that relief association. Assets are not transferred between or among relief associations when a combined service pension is payable.

This approach, where each relief association takes into account service under the other relief associations for vesting purposes, is similar to the approach taken in the statewide pension plans. For example, an employee who is employed for the 10 years of the member's career with a municipality will have a benefit based on 10 years of service under the PERA General Plan. If that employee works the next 15 years for the state, the employee will have a benefit based on the 15 years of service with the state employer under the MSRS General Plan. When that employee retires, the member can elect a "combined service" pension from the PERA General Plan and the MSRS General Plan that takes into service for vesting with both the municipality and the state and the highest average high five salary from either employment. The member will receive two pensions, one from each plan, that takes into account all the member's years of public service for vesting purposes and the member's highest pay in computing the pension under both plans.

The PERA Statewide Volunteer Firefighter Plan, however, takes a different approach. Under the PERA Statewide Plan, a firefighter who has service with more than one fire department receives vesting for service performed with the initial fire department based solely on service performed with that fire department. If the firefighter subsequently serves with a second fire department, vesting service with that fire department is combined with the firefighter's service with the first fire department. However, vesting in the first fire department does not take into account service with the second or subsequent fire departments.

When this topic was considered by the working group, the working group considered these examples showing the difference between the two approaches:

Relief Associations

Sunfish Fire Relief Association = \$1,000 benefit level (*i.e.*, \$1,000 per year of service)

Bass Lake Fire Relief Association = \$2,000 benefit level

Firefighter retires at age 50, with 5 years on the Sunfish Fire Department and 15 years on the Bass Lake Fire Department. (5 years + 15 years = 20 years of service, or 100% vested in both benefits.)

The firefighter's service pension is calculated as follows:

5 years x \$1,000 x 100% = \$5,000

15 years x \$2,000 x 100% = \$30,000

Two service pensions are paid, one from the Sunfish Fire Relief Association equal to \$5,000 and one from the Bass Lake Fire Relief Association equal to \$30,000.

PERA Statewide Volunteer Firefighter Plan

Sunfish Fire Department = \$1,000 benefit level

Bass Lake Fire Department = \$2,000 benefit level

Firefighter retires at age 50, with 5 years on the Sunfish Fire Department and 15 years on the Bass Lake Fire Department. (5 years with the Sunfish Department results in 40% vesting; 5 years + 15 years = 20 years of service, or 100% vesting in the Bass Lake Department.) The firefighter's service pension is calculated as follows:

5 years x \$1,000 x 40% = \$2,000

15 years x \$2,000 x 100% = \$30,000

One service pension is paid by the PERA Statewide Plan, equal to \$32,000.

Section 4 of the bill revises Section 424A.015, subdivision 7, to adopt the approach to combined service pensions used in the PERA Statewide Volunteer Firefighter Plan. In other words, it reduces the flexibility for providing combined service pensions by no longer permitting relief associations to credit service with subsequent relief associations in calculating a firefighter's vesting percentage in the first relief association.

Other changes to subdivision 7 include revising terminology to be uniform throughout the subdivision, removing a requirement that a firefighter have at least 10 years of service taking into account service with all participating relief associations to elect a combined service pension, and changing a notice requirement. The notice requirement is changed from requiring the firefighter to provide notice to the firefighter's first relief association about service in a second relief association to requiring notice to be provided by the firefighter's first relief association to the second or subsequent relief associations.

This section is effective January 1, 2022.

Section 5: Forfeiture upon death in defined contribution relief associations

Section 5 amends subdivision 4 of Section 424A.016, which describes the allocations to firefighters' accounts in a defined contribution relief association. One category of allocations is forfeitures. Forfeitures occur when a firefighter leaves active service before becoming fully vested in his or her account. Forfeitures are not insignificant in these plans because of the long vesting schedules. For example, if a firefighter leaves a fire department after 6 years of service with a \$12,000 account balance (6 years times a benefit level of \$2,000 per year), the firefighter cannot, under current law, be more than 52% vested in the account. This means that, when the non-vested portion of the account is forfeited, 48% or \$5,760 will be forfeited and allocated to other firefighter accounts.

Defined contribution relief associations are required to keep intact for at least five years the accounts of firefighters who separate from active service before becoming fully vested. If the firefighter does not return to active service within five years following the firefighter's separation, the non-vested portion of the account is forfeited, and the forfeited dollars are allocated to the active firefighters' accounts. If the

firefighter returns to active service, no forfeiture occurs, and the firefighter can continue to vest in the account.

Current law does not provide any exceptions to the five-year waiting requirement before the non-vested portion of an account can be forfeited. Section 5 adds an exception to the five-year waiting period for the accounts of firefighters who die during the five-year waiting period if no survivor benefit is payable from the relief association. Since there is no possibility the firefighter can return to active service, the changes in Section 5 to Section 424A.016, subdivision 4, will permit forfeiture of the non-vested portion of the firefighter's account upon death.

This section is effective January 1, 2022.

Section 6: Investment earnings on accounts in defined contribution relief associations

Federal law requires that defined contribution plans, including defined contribution relief associations, credit investment earnings (and losses) to all accounts in the plan, including the accounts of firefighters who have left active service. Firefighters who have an account in the relief association, but have left active service, are considered "deferred members." "Net investment earnings" as used in this memo refers to investment earnings less investment losses.

Until the enactment of the 2020 omnibus pension and retirement bill, defined contribution relief associations were permitted, but not required to, credit net investment earnings to the accounts of deferred members. Under pre-2020 law, relief associations could provide in their bylaws that the accounts of deferred members will be credited with no net investment earnings, even though the assets represented by these accounts would have been invested and likely would have had net investment earnings.

In 2020, Section 424A.016, subdivision 6, was amended to require defined contribution relief associations to credit the accounts of deferred members with net investment earnings beginning January 1, 2021. This new requirement applies to members who are currently deferred and to future deferred members.

The changes in 2020 did not include changes to the permissible methods for crediting net investment earnings. There are three options for crediting net investment earnings to the accounts of deferred members:

- Net investment earnings on the separate account for a deferred member, if the relief association separately invests the assets credited to a deferred member's account;
- Net investment earnings on a separate investment vehicle, if the relief association separately invests the assets credited to deferred members' accounts in a separate investment vehicle; or

- Net investment earnings of the entire special fund where the deferred member's account received a proportionate share of the earnings, based on the assets in the account to total plan assets.

If a relief association's bylaws do not define a method for crediting investment returns, the third option applies, which means deferred members' accounts will be credited with their proportional share of the plan's investment gains and losses. Members who are currently deferred and separated from active service when a relief association's bylaws provided for no net investment earnings or credited net investment earnings using an allocation method that is no longer authorized must start receiving net investment earnings under one of the three authorized options.

Section 6 revises subdivision 6 of Section 424A.016 to clarify the requirements for crediting net investment earnings and give relief associations an additional year to amend their bylaws to conform to the new requirement that net investment earnings must be credited to deferred members' accounts.

Additional considerations

Section 424A.016 differentiates between active and deferred members in the crediting of net investment earnings. Under subdivision 4 of Section 424A.016, defined contribution relief associations are required to credit each active member's account with "any investment return on the assets of the special fund" ... "in proportion to the share of the assets to the credit of the active member account."

Under subdivision 6 of the same statute, accounts of deferred members are treated differently than actives for purposes of receiving net investment earnings on their accounts each year. Instead of the simple proportionate crediting of net investment earnings used for active members (as described above), subdivision 6 provides different options for crediting "interest and additional investment performance." This may be because relief association trustees have decided to invest the assets of the accounts of deferred members differently than actives. Unless they have performed the necessary due diligence and documented their decision-making process, making this distinction between categories of members in investing retirement accounts carries fiduciary risk (for which they may or may not be insured).

Eliminating the distinction in the statute between actives and deferred for purposes of crediting net investment earnings and removing the references to "interest" would simplify administration and ensure that deferred member accounts receive a proportionate share of the plan's net investment earnings. The statute could require that all accounts in a defined contribution relief association share proportionately in net investment earnings each year. This is standard practice for defined contribution plans in the private sector and probably in the public sector as well.

The reference in subdivision 6 to "interest" also may be confusing to relief associations who have prior experience with defined benefit relief associations. Under Section 424A.02, which applies to defined benefit relief associations, defined benefit relief associations are permitted to credit interest at a rate of up to 5% on the benefit accrued by a deferred member. (This is referred to as "augmentation" in the statewide pension plans, which was phased out in the 2018 omnibus pension and retirement bill for the statewide plans.)

LCPR staff requests bylaws from relief associations when the bylaws are relevant to other bill drafting requests. Staff has reviewed bylaws of defined contribution relief associations that credit interest, such as at 3%, to deferred member accounts. If the net investment earnings for the year on all plan assets are less than the interest rate promised to deferred members' accounts, these relief associations must credit the interest on deferred members' accounts first, a reduction to the net investment earnings that would otherwise be credited to active member accounts. There is no other source for the promised interest to be drawn from, only from earnings that would have gone to active members' accounts.

It might be helpful to hear from the State Auditor as to how to ensure compliance with the requirements that bylaws be amended to incorporate changes to the statutes regarding the crediting of net investment earnings in defined contribution relief associations, both for the changes enacted in 2020 and, if these changes become law, in 2021.

This section is retroactively effective to January 1, 2021.

Section 7: Credit for service after a 5-year break in service

Section 7 amends Section 424A.02, subdivision 3, paragraph (h), to provide that years of active service credited to a firefighter in a defined benefit relief association need not be retained after a five-year break in service if the firefighter was not vested at all in his or her benefit at the time the firefighter left active service.

Under current law, paragraph (h) requires relief associations to credit firefighters will all years of active service, except for years of service in excess of any cap on service set forth in the bylaws of a relief association. This means that, in the case of a firefighter who left active service before having been credited with the requisite years of service to be vested, the service credit had to be retained on the books of the relief association indefinitely. If the former firefighter returns to active service, his or her additional years of service are added to the service credit previously earned by the firefighter.

Members of the working group wanted service credit to be extinguished and removed from the books of the relief association if a non-vested firefighter has not returned to active service after five years. The reason cited is that these non-vested former firefighters who have left service are not included when the relief association determines its annual liabilities and funding requirement. When a non-vested member later returns to active service, the liability added for the firefighter's first year of service after returning to service is higher than that of a new member, because they immediately have a larger benefit than a new member due to the prior period of service.

A contrary view would be that the firefighter's prior period of service was, in fact, service and should be included in computing his or her vesting percentage whenever the firefighter returns to active service.

Section 7 amends paragraph (h) to permit relief associations to eliminate service credit for a former firefighter who was not vested at the time the firefighter left active service and who does not return to active service within five years. This effectively reduces the benefit of a firefighter who has a break in service for longer than five years in that the firefighter will not receive a pension benefit that takes into account the earlier period of service.

This section is effective January 1, 2022.

Section 8: Administrative expenses

Section 8 clarifies that authorized expenses of a relief association, under subdivision 3b of Section 424A.05, include filing and application fees payable by the relief association to federal or other government entities, but only if the fees are "necessary to administer the special fund."

This section is effective January 1, 2022.

Section 9: Supplemental benefit to help pay the tax on distributions

Under Section 424A.10, when a relief association pays a lump sum distribution to a firefighter or a surviving spouse or dependents, the relief association is required to pay a supplemental benefit. The supplemental benefit is intended to help the recipient of the benefit pay income taxes on the distribution. A recipient who is a firefighter receives a supplemental benefit equal to 10 percent of the lump sum distribution, up to a maximum of \$1,000. Survivors receive a supplemental benefit equal to 20 percent of the survivor benefit distribution, up to a maximum of \$2,000.

The same requirements apply to the PERA Statewide Volunteer Firefighter Plan whenever it distributes a lump sum benefit to firefighters or survivors.

Relief associations and the PERA Statewide Plan are eligible to apply for reimbursement from the Department of Revenue (DOR) for supplemental benefits paid. DOR reimburses reliefs for supplemental benefits through an appropriation from the State General Fund.

A firefighter may receive more than one lump sum distribution and the statute is not clear as to whether a firefighter can receive more than one supplemental benefit when the firefighter has already received the maximum benefit or some portion of the \$1,000 maximum. Relief associations have paid firefighters a second supplemental benefit and applied to the DOR for reimbursement.

We understand that the DOR has informed relief associations that they will not be reimbursed when the relief association has paid two supplemental benefits to the same firefighter, even though the lump sum distributions were made at different times. In the case of a firefighter who has received two supplemental benefits from two different relief associations, the DOR has been reimbursing both relief associations.

Section 9 revises subdivision 2 of Section 424A.10 to provide that a firefighter who receives more than one lump sum distribution, whether from the same relief association or different relief associations, is eligible to receive a supplemental benefit, subject to a separate \$1,000 maximum for each distribution.

This change will result in a small increase in expenditures to reimburse relief associations and the PERA Statewide Plan for supplemental benefits. A fiscal note was prepared when this same proposal was brought to the Commission for consideration in 2020. The fiscal note is [attached](#) (see page 5 of the fiscal note). The fiscal note has not been updated.

This proposal was amended out of the 2020 Omnibus Pension and Retirement Bill at a Commission meeting in 2020 because of the additional cost.

We do not know whether PERA has a position on this change or whether the change will have any impact on the payment of or reimbursement for supplemental benefits paid by the PERA Statewide Volunteer Firefighter Plan.

This section is effective retroactively for supplemental benefits paid in 2018 and thereafter.

Legislative Commission on Pensions and Retirement

55 State Office Building
Phone: 651-296-2750

100 Rev. Dr. Martin Luther King Jr. Blvd.
TDD: 651-296-9896; Fax: 651-297-3697

St. Paul, MN 55155-1201
www.lcpr.leg.mn