

## HF 2610 (Rasmusson): Volunteer Firefighter Relief Associations; requiring retirement plan assets to be invested with the State Board of Investment

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### Introduction

- Affected Plans:** Retirement plans (defined contribution and defined benefit plans) administered by volunteer firefighter relief associations
- Laws Amended:** Minnesota Statutes, Sections 356.645, 356.646, 356A.06, subdivision 5, and 424A.095
- Brief Description:** The bill amends current law to require relief associations to invest retirement plan assets with the State Board of Investment (SBI) and makes conforming or clarifying changes to affected statutes. Under the bill, relief associations are permitted to:
- hold assets in cash accounts for up to 60 days to make benefit payments and other permitted payments; and
  - retain a financial advisor to advise on allocation among the funds available through the SBI, but the relief association must disclose the fees paid to the advisor.
- Attachment:** “Exhibit C” prepared by the Office of the State Auditor for the meeting of the volunteer fire relief working group on November 10, 2020

### Background

Under current law, volunteer firefighter relief associations can choose to invest some or all of their special funds with the State Board of Investment (SBI), but are not required to do so. A relief association’s “special fund” is the fund to which fire state aid and municipal contributions are credited and from which pension payments are made. Unlike the State’s pension plans for other public

employees, no employee contributions are permitted or required to be made to a relief association's retirement plan.

When relief associations choose to invest with the SBI, the assets are invested through the Supplemental Investment Fund (SIF). The SIF has six investment options available to relief associations. See the SIF prospectus at this link: [SIF Prospectus](#)

The prospectus contains a summary for each fund starting on page 8 of the pdf. Performance for each fund for the most recent fiscal year are reported in detail in the prospectus and compared to benchmarks. Fund expenses are explained both as a management fee (which goes to the managers of the underlying assets) and an administrative fee charged by the SBI. The administrative fee is charged to each plan and is currently set at .006%, or .6bps.

Management fees vary and are higher for actively managed and international funds. For instance, the broad international fund management fee is .24% or 24bps. The others are as follows:

- US Equity Active: .19% or 19bps
- US Equity Index: .01% or 1bp
- Balanced Fund: .04% or 4bps
- Bond Fund: .10% or 10bps
- Money Market: no management fee

According to information provided at a meeting of the volunteer fire relief working group convened by the State Auditor on November 10, 2020, as of July 2020, there were 167 relief associations (or about 30 percent) that invested at least some of their special fund assets with the SBI. In addition to the option of investing with the SBI, relief association trustees have the option of working with a broker or investment advisor or selecting funds for investment themselves. Some relief associations that invest with the SBI also choose to work with a local investment advisor for guidance on asset allocations and investment objectives. The SBI invests funds for relief associations but does not provide advice or guidance on how the funds should be invested.

See the attached "Exhibit C" presented at the meeting on November 10, 2020, which includes a bar graph showing the average annual rates of return for relief associations as compared to the SBI Balanced Fund, 2009 through 2018. The graph shows that the SBI outperformed VFRA's every year, in some years by as much as 4 or 5 percentage points.

## Section by Section Summary

**Section 1** amends Section 356.645 to clarify that the SBI may make available to relief associations the array of investments it makes available to defined contribution plans for public employees. Other defined contribution plans for public employees include the Minnesota Deferred Compensation Plan, the MSRS Unclassified Employees Retirement Plan, and the PERA Defined Contribution Plan.

**Section 2** amends Section 356.646 to relieve the SBI and its staff from liability for investment decisions made by members of relief associations, in addition to members or participants in defined contribution plans for public employees, as is provided under current law.

**Section 3** amends subdivision 5 of Section 356A.06 to change the investment disclosure requirement imposed on relief associations from the annual disclosure under current law to disclosure only if a financial advisor is retained. (See Section 4 for the new provision regarding retaining a financial advisor.) Currently, relief associations are required to annually file a form with the Commission that lists the recipients of investment business, the type of investment, and amount invested with each. We typically receive between 200 to 240 forms each year, out of approximately 550 relief associations. The new requirement would require disclosure only of the fees paid to the financial advisor and we may see better compliance with the disclosure and filing requirement.

**Section 4** amends Section 424A.095 to require relief associations to invest all assets of their special funds with the SBI. A relief association's "special fund" is the fund to which fire state aid and municipal contributions are credited and from which pension payments are made. A new paragraph (b) permits relief associations to retain funds in a cash account for up to 60 days to pay benefits or make other authorized disbursements. Paragraph (c) continues to permit relief associations to retain a financial advisor to advise on selection of investments.

**Section 5** provides instructions for transitioning of special fund assets to the SBI.

## Effective Dates and Author's Amendment

Effective dates for all sections except section 5 is January 1, 2023. We understand the bill's author will offer an amendment that will change the effective date from January 1, 2023, to January 1, 2024. For section 5, the author's amendment will also change all the dates in that section to one year later. The date in line 4.15 will be changed to June 30, 2023, and the date in lines 4.21 and 4.23 will be changed to January 1, 2024.

## Considerations

- Perhaps the most litigated issues for pension and retirement plans are investment decisions by plan fiduciaries. Court cases focus on inadequate due diligence that results in low performing investments or investments that cause the plan to pay too much in investment fees. The boards of trustees of relief associations consist of volunteer firefighters and municipal officials. Each of these trustees is individually liable as a fiduciary for investment decisions. Individual liability means the individual's personal assets are at risk. Were they to be sued for breach of fiduciary duty, indemnification and legal defense is likely limited to what the affiliated municipality is will and able to provide.

Minnesota Statutes, Chapter 356A, applies to relief associations and imposes duties on fiduciaries of public retirement and pension plans. The first fiduciary duty listed in Section 356A.02, subdivision 2 is "investment and reinvestment of plan assets." Under Section 356A.04, persons who may sue fiduciaries for breach of fiduciary duty are members of the plan, taxpayers, and the State of Minnesota. Relief association trustees are at risk if they are not able to demonstrate that they are investing assets prudently, including diversifying investments so as to avoid risk of significant losses and paying no more than reasonable fees and expenses.

There is no case law on this in Minnesota. Therefore, it remains to be seen whether a court would determine that trustees are acting prudently when they invest plan assets with investment firms that charge higher fees and consistently do not perform as well as the SBI or when they invest all their plan assets in community bank CDs and checking accounts.

- With the exception of St. Paul Teachers Retirement Fund Association and the 550 relief associations, all public pension plans in the State are required to be invested with the State Board of Investment. The boards of directors or trustees of MSRS, PERA, and TRA are not allowed to invest pension plan assets, while boards of trustees consisting mostly of volunteer firefighters are allowed to invest pension plan assets. These assets are all taxpayer funded.
- Data presented by the State Auditor to the volunteer fire relief working group shows conclusively that the average rate of return for all relief associations is lower than the rate of return of the SBI Balanced Fund every year from 2009 through 2018.
- We are not aware that there is much, if any, oversight of relief association trustees who may have conflicts of interest with regard to investment decisions. For example, we receive investment disclosure forms showing that 100 percent of the relief association's retirement plan assets are invested in certificates of deposit (CDs) and a checking account at a community bank.

Do any of the volunteer firefighters on the board of the relief association have any financial interest in the bank? Similarly, do any trustees have a financial interest in or receive any perks from the investment management firm with which the relief association is doing business? This will not be an issue if investments transition to SBI.

- Local control is important to relief associations. The bill does not affect most aspects of the retirement plan over which they exercise control. Relief associations will continue to have local control over day-to-day administration, including eligibility, vesting, benefit levels, ancillary benefits, and other features, within parameters established in state statutes. The bill also retains local control over selecting the investment funds available at SBI. Trustees will be able to allocate assets among those funds, while taking comfort in the fact that they were selected through a rigorous due diligence process and are monitored by the SBI.
- The Office of the Legislative Auditor published an evaluation of the volunteer firefighter retirement system in January, 2007, "Pensions for Volunteer Firefighters". (See the report at this link: [OLA Report](#).) In the cover letter published as the third page of the pdf of the report, Legislative Auditor James Nobles included this statement (emphasis added):

Overall, we found that Minnesota's decentralized pension system for volunteer firefighters creates problems and challenges. Most significant is that most relief associations have, over time, earned low rates of return on their investments. **While some elements of local control should remain, we recommend that the Legislature require all volunteer firefighter relief associations to invest their pension funds through the State Board of Investment (SBI).** This would likely increase their rates of return, which could lead to higher pension benefits for their members or decreased mandatory contributions by local government. To help relief associations make prudent investments within the options offered by SBI, we also recommend that they develop investment policies that incorporate best practices.

Attachment: Office of the State Auditor Exhibit C Requiring Investment through the State Board of Investment