

SF 3540 (Rosen); HF 4017 (Nelson, M.): Recommendations of the State Auditor's Volunteer Fire Relief Association Working Group

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Introduction

- Affected Plans:** Volunteer Firefighter Relief Associations
- Laws Amended:** Sections in Chapter 424A (governing volunteer firefighter relief associations): 424A.003, 424A.015, 424A.02, 424A.05, 424A.091, 424A.093, 424A.10, Sections in Chapter 424B (governing relief association consolidation, dissolution, conversion): 424B.10, 424B.13, 424B.22
Section 353G.11 (governing the PERA Statewide Volunteer Firefighter Plan)
- Laws Repealed:** Subdivisions 2a, 2b, and 2c of Section 424A.02
- Brief Description:** The bill contains the recommendations of the State Auditor's Volunteer Fire Relief Association Working Group, including the following:
- Repeals requirements for determining the benefit level (i.e., monthly amount per years of service or lump sum amount per years of service) that a relief association is permitted to include in its bylaws, including:
 - the requirement that the relief association calculate the "average amount of available financing per active covered firefighter," and
 - the tables used to determine the "maximum service pension" (separately for monthly and lump sum relief associations) permitted to be included in the bylaws of a relief association, which lists each level of "maximum service pension" that corresponds to a level of "average amount of available financing per active covered firefighter;"
 - Permits relief association retirement plans to pay a pension benefit to an "alternate payee" under a qualified domestic relations order, and allows relief associations to amend their bylaws to pay the benefit to an alternate payee immediately, rather than wait until the firefighter reaches age 50; 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.

Attachments: [Exhibits H and D](#) (“Maximum Benefit Levels”) prepared by the State Auditor and presented to the State Auditor’s Working Group at meetings on October 12, and November 16, 2021

[Memo](#) to the State Auditor’s Volunteer Fire Relief Association Working Group, from Susan Lenczewski, dated December 8, 2021, re “Federal and State Law Considerations relating to Distributions from Volunteer Firefighter Relief Associations to Alternate Payees under a Domestic Relations Order”

[Fiscal note dated March 16, 2020](#) (*relevant only to Section 10 of the bill*)

Background

SF 3540 (Rosen); HF 4017 (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 five times in October through December 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 was not established by Minnesota law and has no official status. 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.

Section- by- Section Summary

Sections 1, 8, 9, 11, 12, 13: Technical changes related to the repealed subdivisions

SF 3540 repeals subdivisions 2a, 2b, and 2c in Section 424A.02. References in the following statutes to the repealed subdivisions are replaced with a reference to subdivision 3 of section 424A.02 (and a specific paragraph and clause of subdivision 3, in some cases):

353G.11, subdivision 1
424A.091, subdivision 3, paragraph (c), clause (12)
424A.093, subdivision 1, paragraph (b)
424B.10, subdivision 1b, paragraph (b)
424B.13, subdivision 4, paragraph (a)
424B.22, subdivision 4, paragraph (b)

Section 2: Certification of service credit by the fire chief

SF 3540; HF 4017 amends Section 424A.003, which requires the fire chief to certify the service credit for the prior calendar year for each volunteer firefighter rendering active service with the fire department. The fire chief must deliver the certification to the board of trustees of the relief association and the clerk of the municipality. The fire chief must also notify each volunteer firefighter of the amount of service credit recorded for the firefighter. The amendment inserts the requirement that, if requested, the fire chief must provide the firefighter with “a written explanation and documentation to support the determination of service credit.” A firefighter may challenge the fire chief’s determination within specified timeframes.

Section 3: Exception to no assignment or garnishment

SF 3540; HF 4017 amends Section 424A.015, subdivision 2, which prohibits garnishment of a pension benefit payable from the special fund of a relief association and prohibits a person from assigning a pension benefit to which a person is entitled from the special fund of a relief association. The amendment permits an exception from these prohibitions for an assignment of a pension benefit under a court order that is a qualified domestic relations order as defined under new subdivision 5 in Section 424A.05 (see the description of section 7, below).

Section 4: Maximum pension benefit

SF 3540; HF 4017 amends Section 424A.02, subdivision 3, to remove the references to repealed subdivisions 2b and 2c and to state that the maximum pension benefit is \$100 per month for each year of service, for monthly relief associations, and \$15,000 per year for each year of service, for lump sum relief associations. Depending on whether the relief association pays monthly benefits or lump sum benefits, these single limits will apply to all relief associations. Thus, a lump sum defined benefit relief association will be limited to \$15,000 per year of service, rather than the “maximum lump sum service pension amount per year” that applies under current law, based on the “minimum average amount of available financing per firefighter.”

With the repeal of subdivisions 2a, 2b, and 2c, and the changes to subdivision 3 and 3a, there will be no need for a relief association to calculate the “minimum average amount of available financing per firefighter” in order to determine whether its benefit level can be increased and by how much, as long as the new benefit level does not exceed \$15,000 per year for a lump sum plan or \$100 per month for a monthly plan.

Staff may supplement this memo in the future as we research any limits that remain in the statutes on a relief association’s ability to amend its bylaws to increase the benefit level. It appears that one limitation that will continue to apply is in Section 424A.02, subdivision 10. Subdivision 10 permits a bylaws amendment “if authorized under section 424A.092, subdivision 6, or section 424A.03, subdivision 6.”

Section 424A.092, subdivision 6, and Section 424A.03, subdivision 6, which are nearly identical, apply to lump sum relief associations and to monthly benefit relief associations, respectively. This subdivision appears to impose a limit on the bylaws amendment, based on funded status and an actuarial

calculation. For an overfunded relief association for which municipal contributions are not required, subdivision 6 states:

If the special fund of the relief association has a surplus over full funding under subdivision 3, paragraph (c), clause (5), and if the municipality is not required to provide financial support to the special fund of the relief association under this section, the relief association may adopt or amend its articles of incorporation or bylaws which increase or otherwise affect the retirement coverage provided by or the service pensions or retirement benefits payable from the special fund of the relief association which are effective without municipal ratification so long as this does not cause the amount of the resulting increase in the accrued liability of the special fund of the relief association to exceed 90 percent of the amount of the surplus over full funding reported in the prior year and this does not result in the financial requirements of the special fund of the relief association exceeding the expected amount of the future fire state aid and police and firefighter retirement supplemental state aid to be received by the relief association as determined by the board of trustees following the preparation of an estimate of the expected increase in the accrued liability and annual accruing liability of the relief association attributable to the change.

Additional review is needed to understand this sentence and whether there are any other considerations.

This topic was discussed at several meetings of the working group and materials provided are attached ([Exhibits H and D](#) "Maximum Benefit Levels").

Section 5: Penalty for exceeding the maximum pension benefit

SF 3540; HF 4017 amends Section 424A.02, subdivision 3a, to replace references to the applicable maximum service pension amount in the repealed subdivisions (which varies from relief to relief depending on the relief's "minimum average amount of available financing per firefighter") with references to the new maximums under subdivision 3 (\$100 for monthly plans and \$15,000 for lump sum plans). Subdivision 3a imposes a penalty on a relief association that exceeds the maximum benefit. The penalty is to disqualify the relief association from receiving fire state aid and to require the relief association to collect payments made to retired firefighters in excess of the maximum.

Under the changes made by the bill, the penalty will no longer apply to a lump sum relief association unless the relief association pays a benefit that exceeds \$15,000 per year of service.

Sections 6 and 7: Payment to a former spouse under a divorce decree

SF 3540; HF 4017 amends Section 424A.05 to allow payments to a former spouse of a firefighter if pursuant to a divorce decree that is a "qualified domestic relations order." Subdivision 3 of Section 424A.05 is amended to add these payments to the list of "authorized disbursements" from the special fund of relief associations. Relief associations have been receiving these divorce decrees and paying out the assigned pension benefits, but were technically not permitted to do so under subdivision 3 of Section 424A.05.

Section 7 adds a new subdivision 5 in Section 424A.05 to provide definitions of “qualified domestic relations orders” and “alternate payees,” require relief associations to comply with a qualified domestic relations order, and permit relief associations to amend their bylaws to allow:

- Payment of a pension benefit to an alternate payee immediately rather than waiting until the firefighter reaches age 50 and separated from service; and
- Payment in a lump sum, even if the relief association is a monthly benefit relief association.

At the request of the State Auditor’s office, Commission staff researched the federal and state law applicable to divorce decrees that assign pension benefits in qualified governmental retirement plans to inform the discussion at a meeting last fall of the working group. [The memo](#), dated December 8, is attached.

Sections 8 and 9: See Section 1, above, that explains the conforming technical changes made by these sections.

Section 10: 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 (SVF Plan) whenever it distributes a lump sum benefit to firefighters or survivors.

Relief associations and the SVF Plan are eligible to apply for reimbursement from the Department of Revenue (DOR) for supplemental benefits paid. DOR reimburses relief associations and the SVF Plan 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 withheld reimbursement 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 10 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 SVF Plan for supplemental benefits. A fiscal note was prepared when this same proposal was brought to the Commission for consideration in 2020. The [2020 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 and was not included in the 2021 omnibus pension and retirement bill.

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 SVF Plan.

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

Sections 11- 13: See Section 1, above, that explains the conforming technical changes made by these sections.

Sections 14: Repealer

SF 3540; HF 4017 repeals subdivision 2a, 2b, and 2c of Section 424A.02. The repealed sections are included the appendix to the bill. They are:

Subdivision 2a:

- requires relief associations to calculate the “average amount of available financing per active coverage firefighter”;
- defines “amount of available financing” as fire state aid and supplemental state aid, plus municipal contributions, plus 1/10 of the surplus (assets in excess of liabilities);
- directs that the maximum service pension that may be provided in a relief association’s bylaws is the amount in the tables provided in subdivisions 2b and 2c that corresponds to the minimum average amount of available financing per firefighter.

Subdivision 2b:

- directs that the maximum monthly service pension amount per month for each year of service that may be provided for in the bylaws of a monthly benefit relief association is the greater of (i) the amount provided in the bylaws or (ii) the maximum service pension amount that corresponds to the average amount of available financing per active covered firefighter in the table set forth in the subdivision; and

- sets forth a table that provides maximum service pension amounts per month for each year of service in \$.50 increments from a minimum of \$.50 for \$41 in minimum average amount of available financing per firefighter to \$100 for any amount of available financing in excess of \$8,100.

Subdivision 2c:

- provides the same direction as in subdivision 2b (first bullet, immediately above) for the lump sum relief associations; and
- sets forth a table that provides maximum lump sum service pension amounts payable per each year of service in \$10 increments from a minimum of \$20 for \$11 in minimum average amount of available financing per firefighter to \$15,000 for any amount of available financing in excess of \$8,097.

Effective dates

All sections are effective immediately following enactment, except:

- the Repealer (Section 14) and the sections related to the repealed sections (Sections 1, 4, 5, 8, 9, 11, 12, and 13) are effective January 1, 2023; and
- Section 10, regarding supplemental benefits, is retroactively effective to 2018.

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