

Summary of Senate File 3808, 1st Engrossment, as Passed by the Senate 2020 Pension & Retirement Bill

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Introduction

Senate File 3808, the 1st Engrossment, is the 2020 Pension and Retirement bill as passed unanimously by the Senate on May 14, 2020. The bill contains:

- 10 bills approved by the Legislative Commission on Pensions and Retirement (LCPR) during its meetings on March 3 and March 10, 2020;
- 8 bills related to firefighter relief associations approved by the LCPR at its meeting on May 13, 2020;
- 2 amendments, one technical and the other relating to the MSRS Unclassified Plan, also approved by the LCPR at its meeting on May 13, 2020.

Article-by-Article Summary

Article 1: State Board of Investment Provisions (*HF3272-Albright; SF4023-Frentz*)

Article 1 adds "co-investments or separate accounts" and "bank loans" to a list of investment vehicles that the State Board of Investment (SBI) is authorized to use. The article also exempts "liquid alternatives" from a requirement that private market investments cannot exceed 35% of a fund's portfolio (i.e., the SBI cannot have more than 35% of the Combined Fund invested in private markets). The article also makes a number of technical and conforming changes.

Article 2: St. Paul City and School District Contributions to Multiemployer Plans (*HF3788-Nelson M.; SF3658-Senjem & HF3789-Nelson M.; SF3659-Senjem*)

Article 2 contains two related bills. Section 1 revises the definition of excluded employees, that is, employees who are excluded from PERA coverage, by combining all the clauses dealing with employees in a variety of building and construction trades into one clause (15). New item (vii) of clause (15) prospectively excludes trades employees hired on or after July 1, 2020, by the City of St. Paul or St. Paul School District from participation in PERA. The trades for which contributions to multiemployer plans are limited to \$5,000 or \$7,000, for laborers, plumbers, pipefitters, and operating engineers, are excepted from the exclusion for trades employees.

Section 2 authorizes the City of St. Paul and the St. Paul School District to make contributions to certain multiemployer plans on behalf of employees in the building and construction trades. Trades employees

hired before July 1, 2020, who have been participating in the general plan of the Public Employees Retirement Association (PERA), in addition to a multiemployer plan, are grandfathered and will be permitted to continue to participate in both PERA and their multiemployer plan. With the exception of the categories of trades employees noted above, trades employees hired on or after July 1, 2020 are not permitted to participate in PERA. The article also establishes a requirement that the City and School District annually report to the LCPR the number of grandfathered trades employees for whom these employers are still making contributions to PERA.

Section 3 repeals a requirement that has not been complied with for many years, if ever, which is that any change in benefits or employer contributions to a supplemental plan will not take effect unless approved by the legislature. "Supplemental plans" include multiemployer plans, school district 403(b) plans, municipal 457(b) plans, and other retirement plans sponsored by public employers that are not one of the statewide plans, such as MSRS, PERA, or TRA.

Article 3: Phase-out of Enhanced Augmentation under PERA when a Medical Facility Privatizes *(HF4300-Her; SF4201-Jasinski)*

Article 3 revises Chapter 353F, which provides additional benefits to employees whose PERA coverage ends when their employer changes from a governmental subdivision to a nonprofit or for-profit corporation. Affected employers include hospitals, nursing homes, and other medical facilities. The article phases out enhanced augmentation for these employees. Beginning July 1, 2020, the augmentation rate for all previously privatized employees is reduced to two percent, and is eliminated entirely effective January 1, 2024.

Article 4: Modification to State Auditor Reporting Requirements for Pension Plans *(HF3777-Her; SF3672-Rosen)*

Article 4 updates and clarifies the requirements for reporting to the state auditor by public pension plans that do not fully invest their assets with the SBI. It also removes redundant reporting requirements for the SBI. Generally, the updated reporting requirements apply to the Bloomington Fire Department Relief Association, the St. Paul Teachers Retirement Fund Association, and volunteer firefighter relief associations that are not fully invested through the SBI. The article makes a number of conforming and technical changes.

Article 5: Minnesota State Retirement System Administrative Provisions *(HF3903-Murphy; SF3808-Rosen)*

Article 5 contains administrative changes to the pension plans administered by the Minnesota State Retirement System (MSRS), as follows:

- Modifying the definition of "dependent child" to account for children conceived through assisted reproduction where the child was not in gestation prior to the death of the plan member;
- Clarifying treatment of excess employer contributions to match current practice;

- Clarifying that a member's supporting documents must be filed with an application for disability and defining "supporting documents";
- Permitting licensed podiatrists to submit a medical report on behalf of a member filing for disability;
- Revising the list of covered employees in the State Patrol Plan by removing an obsolete provision;
- Making conforming changes to language appropriating a direct aid payment to the Judges Retirement Plan; and
- Fixing an obsolete reference in a section providing for contribution amounts for Judges.

The article also makes two changes that apply generally to public retirement plans in addition to the plans administered by MSRS:

- One of the exceptions from the general prohibition in Minnesota Statutes, section 356.24, against contributing public funds to supplemental plans is for "deferred compensation plans." Current law includes a nearly unintelligible clause that defines these plans. Article 6 restates the clause as a new subdivision that defines "deferred compensation plan." Deferred compensation plans include 457(b) plans, such as the Minnesota Deferred Compensation Plan, and the many 403(b) plans sponsored by school districts. The definition also:
 - clarifies that contributions to these plans may be funded by sick leave, vacation leave, and severance pay, thereby eliminating the need for an unnecessary clause in the list of exceptions; and
 - adds a new reporting requirement for 457(b) and 403(b) plans which requires them to file a copy of their investment fee disclosure forms with the LCPR annually.
- Minnesota Statutes, section 356.44, which permits the partial repayment of refunds is repealed.

Article 6: PERA Administrative Provisions (HF4301-Her); SF4202-Dahms)

Article 6 contains administrative changes to the pension plans administered by PERA, as follows:

- Amending the definition of a seasonal employee;
- Clarifying that a member who purchases service credit for a period of military service is permitted to purchase service credit for less than the entire period of military service if the period is longer than one year and that such purchases must be in increments of six months;
- Correcting a drafting error related to members' eligibility for a retirement annuity;
- Clarifying the date as of which a member or survivor is able to be considered as having begun to receive a retirement annuity, bounce-back annuity, or survivor annuity, where the member or survivor does not file an application for benefits immediately upon the retirement or death;
- Correcting an inaccurate reference from Section 356.631 to Section 356.65;
- Clarifying language related to determining deferred augmentation;

- Clarifying the requirements for eligibility to use a phased retirement option and providing a penalty for violating a phased retirement agreement;
- Clarifying the graded vesting requirements for the Police and Fire Plan;
- Making a number of modifications to the Police and Fire Plan disability provisions including clarifying that a member is not required to terminate service before being eligible to apply for a disability benefit and making retroactive corrections to reflect actual operation in compliance with federal law; and
- Repealing a provision permitting members to suspend or reduce their annuity payments for a period of time.

Article 7: Administrative Changes to the PERA Statewide Volunteer Firefighter Plan (HF4297-Freiberg)

Article 7 makes a number of administrative changes to the PERA Statewide Volunteer Firefighter Plan (SVF), as follows:

- Defining the term "governing body;"
- Establishing a process for a governing body to elect coverage by the SVF when there is no existing volunteer fire relief association;
- Modifying the process for transferring coverage from a volunteer fire relief association to the SVF;
- Establishing procedures for approval when the approving body is a joint powers entity;
- Permitting the calculation of a lump-sum pension amount using months rather than years if it is provided for in the relief association's bylaws;
- Clarifying that a deferred member of a former relief association is eligible for the benefit the member would have received from the former relief association, even though the benefit will be paid from the SVF;
- Permitting the fire chief of a fire department to initiate a benefit increase under the lump-sum division of the SVF, not just the governing body of the municipality, as under current law;
- Changing the official name of the SVF from "voluntary statewide volunteer firefighter retirement" plan or fund to "statewide volunteer firefighter plan" or "statewide volunteer firefighter fund," as applicable; and
- Making other minor clarifying changes.

Article 8: Administrative Changes to the Teachers Retirement Association (HF3752-Her; SF3805-Jasinski)

Article 8 makes a number of administrative changes to chapter 354 administered by the Teachers Retirement Association, as follows:

- Modifying obsolete words or phrases in the definition of "teacher" and "annual base salary;"

- Clarifying the annuity start date;
- Correcting a drafting error relating to early retirement factors which provided for a more generous benefit than was intended and applying the correction retroactively to comply with federal law;
- Clarifying that interest on a refund of employee contributions is calculated through the last day of the month prior to the month in which the refund is issued;
- Repealing a provision permitting members to suspend or reduce their annuity payments for a period of time; and
- Making other minor technical changes.

Article 9: Session Law for One Person (*HF2937-Fischer; SF3087-Wiger*)

Article 9 permits a former firefighter employed by the City of Maplewood to purchase service credit under the PERA Police and Fire Plan for a period of approximately seven months when he should have been participating in the plan, but had not been enrolled by the City. If the member pays the missed employee contributions with interest, the City must pay the missed employer contributions with interest, and PERA will credit the service.

Article 10: Volunteer Firefighter Relief Associations: Increase in the Maximum Lump-Sum Pension Amount (*HF3921-Nelson, M.; SF3550-Rosen*)

Article 10 increases the maximum lump-sum pension amount that is multiplied by years of service to compute lump sum benefits under a defined benefit relief association. The bill increases the maximum from \$10,000 to \$15,000 and adds incremental amounts between \$10,000 and \$15,000. With the exception of fixing one typographical error, the language in Article 10 is identical to HF3921 (Nelson M.); SF3550 (Rosen). The LCPR staff summary of HF3921; SF3550 can be found at:

<https://www.lcpr.leg.mn/documents/mtgmaterials/2020/H3921-S3550.Summary.pdf>

Volunteer firefighter relief associations ("relief associations") provide retirement benefits that are either defined benefit or defined contribution. Defined benefit relief associations can provide either a single lump sum benefit or a monthly annuity upon retirement and some relief associations offer both a lump sum and an annuity. In the case of a defined benefit relief association that pays lump sum benefits, the lump sum benefit is calculated by multiplying years of service times a "lump-sum amount." This lump-sum amount is set forth in the bylaws of the relief association and limited by Minnesota statutes.

A relief association's bylaws may specify any lump-sum amount up to the maximum lump-sum amount applicable to the relief association, which depends on its "minimum average amount of available financing per firefighter" (an amount that takes into account fire state aid, supplemental state aid, and municipal contributions paid to the relief association and the amount of surplus assets). The maximum lump-sum amount a relief association may use in calculating benefits is determined by reference to a table set forth in Minnesota Statutes, Section 424A.02, Subdivision 3, Paragraph (d).

As set forth in the table in Section 424A.02, Subdivision 3, Paragraph (d), the highest lump-sum amount a relief association is able to offer per year of service is currently set at \$10,000, which is the applicable

maximum if the relief association has an average of at least \$5,397 of available financing per active firefighter.

Article 10 modifies Minnesota Statutes, Section 424A.02, Subdivision 3, by extending the table that details the maximum lump-sum pension amount and the corresponding minimum average amount of available financing per firefighter a relief association is able to specify in its bylaws. The new maximum lump sum amount in the extended table is \$15,000 per year of service. To be entitled to offer a benefit equal to \$15,000 per year of service, a relief association's maximum required financing is \$8,097 per firefighter.

Section 2 of Article 10 repeals Laws 2018, Chapter 211, Article 14, Section 29, which permits Plymouth to increase its lump-sum amount up to \$12,500. The section is repealed because under Section 1, the new maximum lump-sum amount is higher than the current \$12,500 maximum available to Plymouth. Under Section 1, Plymouth would be able to continue at its current benefit level or increase the benefit level to up to \$15,000 per year or service.

Article 11: Volunteer Firefighter Relief Associations: Allocation of Fire State Aid *(HF3870-Nelson, M.; SF3547-Rosen)*

Article 11 contains the recommendations of the Fire State Aid Work Group to permit a municipality to allocate (or split) its fire state aid between its career firefighters and its volunteer firefighters, but only if the amount allocated to the career firefighters is agreed to by the relief association. The article includes the language from HF3870 (Nelson M.); SF3547 (Rosen); the language from HF2925 (Halverson); SF4399 (Carlson), which deals with the allocation of fire state aid for the city of Eagan, and language from two proposed amendments to accommodate allocation agreements already in place for the cities of Hibbing and Austin.

The LCPR staff summary of HF3870; SF3547 can be found at:

<https://www.lcpr.leg.mn/documents/mtgmaterials/2020/H3870-S3547.Summary.pdf>.

The LCPR staff summary of HF2925; SF4399 can be found at:

<https://www.lcpr.leg.mn/documents/mtgmaterials/2020/H2925-S4399.Summary.pdf>.

Under current law, if a municipality is affiliated with a relief association, any fire state aid the municipality receives must be sent to the relief association. This remains true regardless of whether the municipality also has full-time or career firefighters covered by the Public Employees Retirement Association (PERA) Police and Fire Plan.

In the 2018 pension bill, the legislature established a working group to investigate whether municipalities with combination departments (fire departments with both career firefighters and volunteer firefighters) should be permitted to allocate their fire state aid between their volunteer firefighters and career firefighters. The work group produced a report recommending that the law be changed to allow municipalities with combination fire departments to allocate fire state aid to both their volunteer firefighters and their full-time firefighters, but only if the municipality and the fire relief

association agree to the allocation. If no agreement is reached, the group recommended that fire state aid continue to be transferred to the relief association, as is required under current law.

Sections 1 and 2 of Article 11 implement most of the work group's recommendation and do the following:

- Authorize municipalities to allocate fire state aid between their affiliated volunteer firefighter relief association and their career firefighters if there is an aid allocation agreement between the municipality and the relief association;
- Require that any aid allocated to career firefighters must be used to pay PERA employer contributions within 18 months of the transfer or be returned to the relief association;
- Describe the requirements for an acceptable aid allocation agreement;
- Provide for the termination of an aid allocation agreement by the mutual consent of the municipality and the relief association or by either party upon a 50% or more change in the fire state aid transmitted to the municipality by the state; and
- Establish a requirement that aid allocation agreements must be filed with the State Auditor.

Section 3 of Article 11 grandfathers the fire state aid allocation arrangements of the cities of Hibbing and Austin. Hibbing is allocating fire state aid under a court ordered settlement agreement and a 1980, session law. Austin is allocating fire state aid under a session law passed in 2019. Both cities are permitted to continue their current arrangement until such time as their arrangement changes. At that point, the city would be required to comply with Sections 1 and 2, as described above. Hibbing's 1980 session law is repealed in Section 5 of Article 11.

Section 4 of Article 11 permits the city of Eagan to allocate fire state aid paid in 2020 pursuant to an aid allocation agreement. The authority to do so expires June 30, 2022.

Article 12: Volunteer Firefighter Relief Associations: Dissolution and Retirement Plan Termination (HF4107-Nelson, M); SF4123-Rosen)

Article 12 is legislation resulting from the recommendations of the Conversions and Dissolutions Work Group. The 2018 pension bill directed that a work group be established to study the current state of applicable law and the prevalence of overfunding among defined benefit relief associations, and make recommendations for revising the statutes regarding dissolutions of relief associations and to add new procedures that would allow relief associations to convert the retirement plan they administer from defined benefit to defined contribution. The work group produced a report recommending that the current law regarding dissolutions, Minnesota Statutes, Sections 424B.20 and 424B.21, be replaced entirely and that new law be enacted to provide procedures for conversions. Article 15 proposes new law regarding conversions and is summarized later in this summary.

Sections 1 through 14 are new subdivisions for new definitions to supplement definitions already provided in Minnesota Statutes, Section 424B.01. New definitions include definitions for "defined benefit plan" and "defined contribution plan", "municipality," which addresses municipalities that are part to a joint powers agreement, "required contribution," and "retiree in pay status."

Section 15 sets forth new Section 424B.22, titled “Relief Association Dissolution and Retirement Plan Termination,” which consists of 12 subdivisions that is a new set of procedures and requirements for dissolving a relief association and terminating its retirement plan. Steps in the process include fully vesting all members in their retirement benefits; authority to increase the lump sum amount or monthly benefit amount to reduce any surplus and pay the surplus to firefighters in the form of larger retirement benefits. (“Surplus” is defined in Section 14 as the amount by which assets exceed liabilities.); a requirement that the board of trustees transfer any remaining surplus to the affiliated municipality up to the amount of required contributions made by the municipality during the preceding 10 years, and thereafter split any remaining surplus equally between the relief association and the municipality; and a requirement that payment of all retirement benefits within 210 days of the effective date of plan termination, thereby allowing firefighters to receive their benefits immediately, rather than waiting until they reach age 50.

Section 16 repeals current law on dissolution of relief associations, since the process under current law is being entirely replaced with the foregoing new law.

Article 13: Brooklyn Park Firefighters' Relief Association: Dissolution of the Relief Association and Plan Termination (*HF3153-Nelson, M.; SF3900-Hoffman*)

Article 13 provides for the dissolution of the volunteer firefighter relief association affiliated with Brooklyn Park and termination of the retirement plan. Article 13 is based on HF3153; SF3900, as introduced, with revisions to incorporate changes agreed to by representatives of Brooklyn Park and the relief association and changes made by LCPR staff to correct or clarify provisions. The LCPR staff summary of HF3153; SF3900 and the amendment can be found at <https://www.lcpr.leg.mn/documents/mtgmaterials/2020/H3153-S3900.Summary.pdf>.

The city of Brooklyn Park terminated the services of all of its paid on call firefighters by December 31, 2019, as part of its transition to a fire department staffed by full-time and part-time “career” firefighters. The Brooklyn Park Firefighters’ Relief Association met on July 9, 2020, and voted to begin the dissolution process. The relief association is a defined contribution plan, which means that each firefighter has an account in the fund to which an equal allocation of the fire state aid, any contributions from the city, forfeitures, and net investment earnings are credited, and from which administrative expenses are deducted.

Article 13 provides for the dissolution of the Brooklyn Park Firefighters’ Relief Association and the termination of the retirement plan administered by the relief association. The bill requires the relief association to fully vest all accounts in the relief association retirement plan and make immediate distributions of accounts, among other requirements.

The effective date section states that Article 13 is effective the day after compliance with the local approval requirements in Minnesota Statutes, Section 645.021, which require approval by the Brooklyn Park City Council and the filing of the Council’s resolution with the Secretary of State.

Representatives of the city and the relief association worked on the bill and reached agreement on its provisions.

Article 14: Ramsey Volunteer Firefighters' Relief Association: Division of the Relief Association (SF4424-Benson)

Article 14 provides for the division of the Ramsey Firefighters' Relief Association. The cities of Ramsey and Nowthen are in the process of terminating a joint powers agreement by which fire services were provided through one fire department. Ramsey currently employs all the firefighters who provide firefighting services under the agreement, but will be terminating the employment of the firefighters assigned to the Nowthen fire station. Nowthen intends to hire most of the firefighters whose employment is terminated by Ramsey. This process is to be completed by December 31, 2021.

The Ramsey relief association is a defined contribution plan, which means that each member receives a lump sum benefit based on the size of the member's account in the plan. Fire state aid is allocated each year in equal shares to the accounts of active firefighters.

The division of the relief association is to be accomplished through legislation that will require the relief association to transfer the retirement accounts of the firefighters assigned to the Nowthen fire station to a new relief association. The new relief association will cover firefighters whose employment with the City of Ramsey is terminated and who are subsequently employed by the City of Nowthen. Accounts of former firefighters who had been assigned to the Nowthen fire station, but are not hired by the Nowthen, are to be transferred to the new Nowthen relief association, to allow for any forfeitures to occur in the new relief association that will cover the Nowthen firefighters and be allocated among the accounts of the Nowthen firefighters.

If firefighters are terminated by Ramsey during 2020, Ramsey is required to share with Nowthen a portion of the fire state aid it will receive in 2021 and would otherwise have transferred to its relief association.

This bill includes the option to transfer the Nowthen-related accounts to a defined contribution plan administered by PERA in the PERA Statewide Volunteer Firefighter Plan. If this is an option Nowthen wants to pursue, legislation will be needed next session to establish a defined contribution plan within the PERA Plan. Currently, the PERA Statewide Plan does not permit defined contribution accounts.

Representatives of both cities and the relief association worked on the bill and reached agreement on its provisions.

Article 15: Volunteer Firefighter Relief Associations: Conversions from Defined Benefit Plan to Defined Contribution Plan (SF4438-Rosen)

Article 15 is the second bill resulting from the recommendations of the Conversions and Dissolutions Work Group, the first of which is Article 12 and is summarized earlier in this memo. The 2018 pension bill directed that a work group be established to study the current state of applicable law and the prevalence of overfunding among defined benefit relief associations, and make recommendations for

revising the statutes regarding dissolutions of relief associations and to add new procedures that would allow relief associations to convert the retirement plan they administer from defined benefit to defined contribution. The work group produced a report recommending that the current law regarding dissolutions, Minnesota Statutes, Sections 424B.20 and 424B.21, be replaced entirely and that new law be enacted to provide procedures for conversions. This article is new law regarding conversions.

Sections 1 through 12 are new subdivisions for new definitions to supplement definitions already provided in Minnesota Statutes, Section 424B.01. Section 13 sets forth new Section 424B.13, titled "Conversion of Relief Association Defined Benefit Plan to Defined Contribution Plan," which consists of 10 subdivisions that provide a procedure and requirements for converting a defined benefit relief association to a defined contribution relief association. The new procedures include a requirement that all retirement benefits under the defined benefit plan become fully vested and authority to allocate any surplus among the new accounts in the defined contribution plan.

Article 16: Volunteer Firefighter Relief Associations: Legislation recommended by the State Auditor's Volunteer Firefighter Working Group.
(*HF3778-Nelson M.; SF3673-Rosen*)

Article 16 contains the recommendations of State Auditor's Volunteer Fire Relief Association Working Group found in HF3778 (Nelson M.); SF3673 (Rosen). The working group's recommendations are the result of the work of the group's work during 2019 and early 2020. The group is convened by the State Auditor and meets through the fall and early winter preceding each legislative session. The group's proposed legislation addresses a variety of issues identified by the State Auditor and members of the working group, all of which affect Minnesota's volunteer firefighter relief associations. The full LCPR staff summary of HF3778; SF3673 and the amendment can be found at <https://www.lcpr.leg.mn/documents/mtgmaterials/2020/H3778-S3673.Summary.pdf>.

Article 16 consists of 8 sections making administrative and substantive changes to the administration of relief associations including:

- Reducing the period from 60 days to 21 days during which a firefighter can dispute a fire chief's certification of the amount of service credit the firefighter earned during the previous year;
- Requiring defined contribution plans to credit inactive members with investment returns/losses; and
- Moving accrued liability tables in Minn. Stat. § 434A.092, Subd. 2, from that statute to the appendix to the Standards for Actuarial Work established by the LCPR.

Article 17: MSRS Unclassified Plan: Grandfathering 2016 Factors for Annuities until June 30, 2021. (*SF4067-Rosen*)

In 2016, changes in mortality and other assumptions prompted MSRS to adjust the annuity factors used to convert a balance in an Unclassified Plan account to a lifetime annuity. The adjusted factors were significantly less generous to Unclassified Plan members and resulted in an average reduction in the monthly benefit amount of about 7.3% when compared to the old factors. Wishing to delay some of the effects of this change, in 2017, the legislature passed a provision permitting certain employees to

continue to retire under the old factors for three years. The employees that were grandfathered under the provision were those who retired when they were at least age 63 or had at least 26 years of covered service. Anyone grandfathered under the 2017 legislation who retires after June 30, 2020, will retire under the updated factors and will be subject to the reduction in the annuity amount.

Article 17 adds a new paragraph (d) to Minnesota Statutes, section 352D.06, subdivision 1, that extends the use of the more generous factors for one more year, to members who retire after July 1, 2020, and before July 1, 2021. The group of participants eligible remains the same as under the current grandfather provision in paragraph (c), so to be eligible for the more generous annuity, the participant has to have reached age 63 or have at least 26 years of service by June 30, 2020.

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