

Minnesota Volunteer Fire Relief Association

Working Group Meeting

Office of the State Auditor

Thursday, November 1, 2007

11 a.m. to 1 p.m.

I. Call to Order

Chair Auditor Otto.

II. Review and Approval of Working Group Meeting Minutes

Exhibit A. Draft October 23, 2007 Minutes

III. Ancillary Benefit Issues

Exhibit B. Minn. Stat. § 424A.02, subd. 9

- Benefit Reductions
- Age Requirements

IV. Funeral Benefits

Exhibit C. Minn. Stat. § 424A.05, subd. 3

V. Surviving Spouse Definition

Exhibit D. Minn. Stat. § 424A.001, subd. 6 (VFRA)

Exhibit E. Minn. Stat. § 353.01, subd. 20 (PERA)

VI. Other Business

- Update on the Statewide Plan
- Update on FRPAS

VII. Next Meeting

Tuesday, November 13, 2007

11 a.m. to 1 p.m.

Office of the State Auditor

VIII. Adjournment

Volunteer Fire Relief Association Working Group

Office of the State Auditor

Tuesday, October 23, 2007

11 a.m. to 1 p.m.

Members Present

Ed Dietz, Maplewood Fire Relief Association Treasurer (defined benefit lump sum plans)

Jim Hansen, Minnesota Area Relief Association Coalition Representative

Dave Jaeger, Mahnomen Fire Relief Association Treasurer (defined benefit lump sum plans)

Larry Martin, Legislative Commission on Pensions and Retirement Director

Tom Nelson, Northfield Fire Relief Association Secretary (defined benefit lump sum plans)

Rebecca Otto, State Auditor

Curt Roberts, Maple Grove Fire Relief Association President (defined contribution plans)

Tim Simon, Elk River City Finance Director

Mike Stroeing, Minnesota State Fire Department Association Representative

Steven Wallner, Watertown City Finance Director

Nyle Zikmund, Minnesota State Fire Chiefs Association Representative (defined benefit monthly plans)

Members Excused

Dave Ganfield, Apple Valley Fire Relief Association Administrator (defined benefit monthly/lump sum combination plans)

Others Present

Wayne Anderson, Coon Rapids Fire Relief Association Representative

Nancy Bode, Assistant Legal Counsel

Colleen Bollom, Minnesota Firefighter Pension Consultants Representative

Edward Burek, Deputy Director of the Legislative Commission on Pensions and Retirement

Aaron Dahl, Pension Analyst

Jeff Falk, Communications Director

Celeste Grant, Deputy State Auditor/General Counsel

Rose Hennessy Allen, Pension Director

Craig Hertog, Loretto Fire Relief Association Representative

Mike Miller, Integra Shield Financial Group Representative

Paul Rosen, Pension Analyst

The following motions were duly made, seconded and approved:

RESOLVED to approve the Working Group Meeting Schedule.

RESOLVED to approve the Working Group Purpose Statement.

RESOLVED to approve the Working Group Process with the understanding that unanimous approval would be the goal, but that consensus would be considered achieved if there is only one member in opposition.

RESOLVED to approve leaving the \$200,000 audit threshold unchanged.

RESOLVED to approve a requirement to report evidence of theft in such a manner that it does not single out relief associations.

RESOLVED to approve Auditor Otto as the chair for each Working Group meeting.

I. Call to Order

Chair Auditor Otto called the meeting to order.

II. Working Group Process Discussion

- Auditor Otto asked that each of the members review the proposed Working Group Meeting Schedule and asked if there were any scheduling conflicts. Jaeger made a motion to approve the meeting schedule, which was seconded by Stroeing and approved unanimously.
- Auditor Otto read the Working Group Purpose Statement and noted that the statement had changed slightly. Zikmund moved to approve the purpose statement. Dietz seconded the motion and it was approved unanimously.
- The members next discussed the Working Group Process, and Auditor Otto asked if consensus should still be defined as unanimous approval. In the past, proposals required unanimous approval to be advanced. The members discussed the importance of unanimous approval but also agreed that the Group has worked through many of the basic topics. As more complex topics come before the Group it may be harder to achieve unanimous approval. Members didn't want to stop the Group's progress if only one member opposed a proposal. Zikmund made a motion to adopt the Working Group process statement with the understanding that unanimous approval would be the goal, but that consensus would be considered achieved if there was only one member in opposition. The motion was amended to clarify that only one member could be in opposition while a proposal would still pass. Stroeing seconded the motion and it was approved unanimously.
- Auditor Otto asked each of the members to review their contact information on the Working Group Membership List. A few changes were noted.

III. Overview of Recently Enacted Relief Association Laws

Martin provided an overview of the relief association law changes passed during the 2006 and 2007 sessions. The survivor supplemental benefit change was a suggestion from Representative Rukavina and was intended to increase the amount paid to the survivor of a deceased firefighter. Martin explained that the Pension Commission was not aware that the Department of Revenue was already allowing supplemental benefits to be paid to survivors. The 2006 change in effect tripled the supplemental benefit for survivors, instead of doubling the amount as intended. The provision was revisited during the 2007 session and amended to reflect the original intent.

IV. Audit Reporting Requirements

Auditor Otto explained that this topic was brought forth by several different relief associations asking that the \$200,000 audit threshold be reevaluated. Suggestions for changes include increasing the threshold to a new set amount or indexing the threshold. Auditor Otto stated that there are currently about 400 relief associations above the

threshold that have the audit requirement, and about 300 relief associations below the threshold. Martin said that requirements to sign off on financial reports have been around since the 1970's. The audit requirement became law during the 1986 session.

Members of the Group agreed that having an audit performed is a good thing and allows the board and members to see what's going on with the plan. An audit is proactive instead of reactive. The Working Group acknowledged that audit costs can be considerable for small relief associations. Members of the Group said that in their experience, the relief association was able to save money by joining with the city to bid out the audit. Education was encouraged for relief associations on the benefits of an audit, along with recommendations to pursue piggy-backing with the city for audit services when the city prepares a request for proposal. It was also noted that the audit threshold is higher for relief associations than for small cities and towns.

Hansen moved to leave the \$200,000 audit threshold unchanged. The motion was seconded by Wallner. The motion passed with all voting in favor except Simon, who opposed.

V. Requirement to Report Evidence of Theft

Auditor Otto explained that there is currently a state law that requires public employees of political subdivisions to report evidence of theft, embezzlement, unlawful use of public funds or property, or misuse of public funds. The employee must report to law enforcement, and is required to report in writing to the State Auditor. This provision arguably could cover a volunteer fire relief association, but the Office of the State Auditor would like the Group to consider adding language that would clarify that reporting is required.

Bode discussed the role of the Legal/Special Investigations division within the Office of the State Auditor, discussed confidentiality requirements, and issues surrounding reporting delays and the statute of limitations. The Group discussed the importance of educating boards of trustees about reviewing the audit and establishing internal controls. Members were in favor of making a change that does not single-out relief associations.

Martin said that he would work with the OSA and the Working Group to draft language. Zikmund made a motion to require reporting evidence of theft in such a manner that it does not single out relief associations. Dietz seconded the motion and it was approved unanimously.

VI. Other Business

- Auditor Otto explained that the Office of the State Auditor is in the process of revamping its website to make the site more user-friendly. Frequently Asked Questions will be posted on the website. Auditor Otto asked members to provide any frequent questions that would be helpful to answer, that could be used by municipalities, relief association members, and legislators.

Volunteer Fire Relief Association Working Group

October 23, 2007

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- Jaeger asked for a status update on the Fire Relief Pension Accounting System program. Auditor Otto said that an update would be provided at the next meeting.
- Auditor Otto asked whether the Working Group wanted to continue with rotating chairs for each meeting. She offered to chair the meetings if the Group would prefer, as she is a neutral party and would allow the members to discuss issues while she would keep the meetings on track and moving forward. Motion by Dietz to have Auditor Otto chair each Working Group meeting. Jaeger seconded the motion and it was approved unanimously, with Auditor Otto abstaining.

VII. Next Meeting Date

The next meeting will be held from 11 a.m. to 1 p.m. on Thursday, November 1, 2007 in the Office of the State Auditor's Conference Room.

VIII. Adjournment

Stroeing made a motion to adjourn. Jaeger seconded the motion that was approved unanimously. The meeting was adjourned at 1:00 p.m.

To the extent that the commissioner of commerce deems it to be necessary or practical, the commissioner may specify and issue procedures, forms or mathematical tables for use in performing the calculations required pursuant to this subdivision.

Subd. 8a. Purchase of annuity contracts. A relief association providing a lump-sum service pension, if the governing articles of incorporation or bylaws so provide, may purchase an annuity contract on behalf of a retiring member in an amount equal to the service pension otherwise payable at the request of the person and in place of a direct payment to the person. The annuity contract must be purchased from an insurance carrier licensed to do business in this state and approved for this product by the commerce commissioner under section 60A.40.

Subd. 8b. Transfer to individual retirement account. A relief association that is a qualified pension plan under section 401(a) of the federal Internal Revenue Code, as amended, and that provides a lump sum service pension, at the written request of the applicable retiring member or, following the death of the active member, at the written request of the deceased member's surviving spouse, may directly transfer the eligible member's lump sum pension or the death, funeral, or survivor benefit attributable to the member, whichever applies, to the requesting person's individual retirement account under section 408(a) of the federal Internal Revenue Code, as amended.

Subd. 9. Limitation on ancillary benefits. Any relief association, including any volunteer firefighters relief association governed by section 69.77 or any volunteer firefighters division of a relief association governed by chapter 424, may only pay ancillary benefits which would constitute an authorized disbursement as specified in section 424A.05 subject to the following requirements or limitations:

(1) with respect to a relief association in which governing bylaws provide for a lump sum service pension to a retiring member, no ancillary benefit may be paid to any former member or paid to any person on behalf of any former member after the former member (i) terminates active service with the fire department and active membership in the relief association; and (ii) commences receipt of a service pension as authorized under this section; and

(2) with respect to any relief association, no ancillary benefit paid or payable to any member, to any former member, or to any person on behalf of any member or former member, may exceed in amount the total earned service pension of the member or former member. The total earned service pension must be calculated using the service pension amount specified in the bylaws of the relief association and the years of service credited to the member or former member. The years of service must be determined as of (i) the date the member or former member became entitled to the ancillary benefit; or (ii) the date the member or former member died entitling a survivor or the estate of the member or former member to an ancillary benefit. The ancillary benefit must be calculated (i) without regard to whether the member or former member had attained the minimum amount of service and membership credit specified in the governing bylaws; and (ii) without regard to the percentage amounts specified in subdivision 2; except that the bylaws of any relief association may provide for the payment of a survivor benefit in an amount not to exceed five times the yearly service pension amount specified in the bylaws on behalf of any member who dies before having performed five years of active service in the fire department with which the relief association is affiliated.

Subd. 9a. Postretirement increases. Notwithstanding any provision of general or special law to the contrary, a relief association paying a monthly service pension may provide a postretirement increase to retired members and ancillary benefit recipients of the relief association if (1) the relief association adopts an appropriate bylaw amendment; and (2) the bylaw amendment is approved by the municipality pursuant to subdivision 10 and section 69.773, subdivision 6. The postretirement increase shall be applicable only to retired members and ancillary benefit recipients receiving a service pension or ancillary benefit as of the effective date of the bylaw amendment. The authority to provide a postretirement increase to retired members and ancillary benefit recipients of a relief association contained in this sub-



424A.05, Minnesota Statutes 2007

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424A.05 RELIEF ASSOCIATION SPECIAL FUND.

Subdivision 1. **Establishment of special fund.** Every relief association shall establish and maintain a special fund within the relief association.

Subd. 2. **Special fund assets and revenues.** The special fund shall be credited with all fire state aid moneys received pursuant to sections [69.011](#) to [69.051](#), all taxes levied by or other revenues received from the municipality pursuant to sections [69.771](#) to [69.776](#) or any applicable special law requiring municipal support for the relief association, any moneys or property donated, given, granted or devised by any person which is specified for use for the support of the special fund and any interest earned upon the assets of the special fund. The treasurer of the relief association shall be the custodian of the assets of the special fund and shall be the recipient on behalf of the special fund of all revenues payable to the special fund. The treasurer shall maintain adequate records documenting any transaction involving the assets or the revenues of the special fund. These records and the bylaws of the relief association shall be public and shall be open for inspection by any member of the relief association, any officer or employee of the state or the municipality, or any member of the public, at reasonable times and places.

Subd. 3. **Authorized disbursements from the special fund.** (a) Disbursements from the special fund are not permitted to be made for any purpose other than one of the following:

- (1) for the payment of service pensions to retired members of the relief association if authorized and paid under law and the bylaws governing the relief association;
- (2) for the payment of temporary or permanent disability benefits to disabled members of the relief association if authorized and paid pursuant to law and specified in amount in the bylaws governing the relief association;
- (3) for the payment of survivor benefits to surviving spouses and surviving children, or if none, to designated beneficiaries, of deceased members of the relief association, and if survivors and if no designated beneficiary, for the payment of a death benefit to the estate of the deceased active firefighter, if authorized by and paid pursuant to law and specified in amount in the bylaws governing the relief association;
- (4) for the payment of any funeral benefits to the surviving spouse, or if no surviving spouse, the estate, of the deceased member of the relief association if authorized by law and specified in amount in the bylaws governing the relief association;
- (5) for the payment of the fees, dues and assessments to the Minnesota State Fire Department Association, to the Minnesota Area Relief Association Coalition, and to the state Volunteer Firefighters Benefit Association in order to entitle relief association members to membership in and the benefits of these associations or organizations; and
- (6) for the payment of administrative expenses of the relief association as authorized under section [69.80](#).

(b) For purposes of this chapter, a designated beneficiary must be a natural person.

Subd. 4. **Investments of assets of the special fund.** The assets of the special fund shall be invested only in securities authorized by section [69.775](#).

History: 1979 c 201 s 15; 1981 c 224 s 211; 1981 c 224 s 274; 1983 c 219 s 9; 2000 c 461 art 15 s 11; 2006 c 271 art 13 s 4

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424A.001, Minnesota Statutes 2007

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424A.001 DEFINITIONS.

Subdivision 1. **Terms defined.** As used in this chapter, the terms defined in this section have the meanings given.

Subd. 2. **Fire department.** "Fire department" includes municipal fire department and independent nonprofit firefighting corporation.

Subd. 3. **Municipality.** "Municipality" means a municipality which has a fire department with which the relief association is directly associated, or the municipalities which contract with the independent nonprofit firefighting corporation of which the relief association is a subsidiary.

Subd. 4. **Relief association.** "Relief association" means (a) a volunteer firefighters' relief association or volunteer firefighters' division or account of a partially salaried and partially volunteer firefighters' relief association organized and incorporated under chapter 317A and any laws of the state, governed by this chapter and chapter 69, and directly associated with a fire department established by municipal ordinance; or (b) any separate incorporated volunteer firefighters' relief association subsidiary to and providing service pension and retirement benefit coverage for members of an independent nonprofit firefighting corporation organized under the provisions of chapter 317A, governed by this chapter, and operating exclusively for firefighting purposes. A relief association is a governmental entity that receives and manages public money to provide retirement benefits for individuals providing the governmental services of firefighting and emergency first response.

Subd. 5. **Special fund.** "Special fund" means special fund of a volunteer firefighters' relief association or the account for volunteer firefighters within the special fund of a partially salaried and partially volunteer firefighters' relief association.

Subd. 6. **Surviving spouse.** For purposes of this chapter, and the governing bylaws of any relief association to which this chapter applies, the term "surviving spouse" means any person who was the dependent spouse of a deceased active member or retired former member living with the member at the time of the death of the active member or retired former member for at least one year prior to the date on which the member terminated active service and membership.

Subd. 7. **Fiduciary responsibility.** In the discharge of their respective duties, the officers and trustees shall be held to the standard of care enumerated in section [11A.09](#). In addition, the trustees must act in accordance with chapter 356A.

Each member of the board is a fiduciary and shall undertake all fiduciary activities in accordance with the standard of care of section [11A.09](#), and in a manner consistent with chapter 356A. No fiduciary of a relief association shall cause a relief association to engage in a transaction if the fiduciary knows or should know that a transaction constitutes one of the following direct or indirect transactions:

(1) sale or exchange or leasing of any real property between the relief association and a

board member;

(2) lending of money or other extension of credit between the relief association and a board member or member of the relief association;

(3) furnishing of goods, services, or facilities between the relief association and a board member; or

(4) transfer to a board member, or use by or for the benefit of a board member, of any assets of the relief association. Transfer of assets does not mean the payment of relief association benefits or administrative expenses permitted by law.

Subd. 8. **Firefighting service.** "Firefighting service," if the applicable municipality approves for a fire department that is a municipal department, or if the contracting municipality or municipalities approve for a fire department that is an independent nonprofit firefighting corporation, includes service rendered by fire prevention personnel.

Subd. 9. **Separate from active service.** "Separate from active service" means to permanently cease to perform fire suppression duties with a particular volunteer fire department, to permanently cease to perform fire prevention duties, to permanently cease to supervise fire suppression duties, and to permanently cease to supervise fire prevention duties.

Subd. 10. **Volunteer firefighter.** "Volunteer firefighter" means a person who:

(1) was a member of the applicable fire department or the firefighting corporation and a member of the relief association on July 1, 2006; or

(2) became a member of the applicable fire department or the firefighting corporation and is eligible for membership in the applicable relief association after June 30, 2006, and

(i) is engaged in providing emergency response services or delivering fire education or prevention services as a member of a municipal fire department, a joint powers entity fire department, or an independent nonprofit firefighting corporation;

(ii) is trained in or is qualified to provide fire suppression duties or to provide fire prevention duties under subdivision 8; and

(iii) meets any other minimum firefighter and service standards established by the fire department or firefighting corporation or specified in the articles of incorporation or bylaws of the relief association.

History: 1983 c 219 s 4; 1986 c 359 s 18,19; 1Sp1986 c 3 art 2 s 40; 1989 c 304 s 137; 1989 c 319 art 8 s 26; 1996 c 438 art 8 s 1,2; 2000 c 461 art 15 s 4; 2006 c 271 art 13 s 2

NOTE: Subdivision 10 as added by Laws 2006, chapter 271, article 13, section 2, is effective January 1, 2008. Laws 2006, chapter 271, article 13, section 7.

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Subd. 17a. Average salary. (a) "Average salary," for purposes of calculating a retirement annuity under section 353.29, subdivision 3, means an amount equivalent to the average of the highest salary of the member, police officer, or firefighter, whichever applies, upon which employee contributions were paid for any five successive years of allowable service, based on dates of salary periods as listed on salary deduction reports. Average salary must be based upon all allowable service if this service is less than five years.

(b) "Average salary" may not include any reduced salary paid during a period in which the employee is entitled to benefit payments from workers' compensation for temporary disability, unless the average salary is higher, including this period.

Subd. 18. Year of allowable service. "Year of allowable service" means any 12 calendar months not necessarily consecutive in which a public employee received compensation from the governmental subdivision or was eligible to credit for service. It also means 12 months credit each year for employees who are paid on a yearly basis and who may or may not receive compensation in every calendar month in the year.

Subd. 19. Total and permanent disability. "Total and permanent disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to be of long-continued and indefinite duration. Long-continued and indefinite duration means that the disability has been or is expected to be for a period of at least one year.

Subd. 20. Surviving spouse. "Surviving spouse" means the spouse of a deceased member or disabilitant who was legally married to the member at the time of death.

Subd. 21. [Repealed, 1971 c 106 s 40]

Subd. 22. [Repealed, 1971 c 106 s 40]

Subd. 23. Retirement annuity. "Retirement annuity" means the amount paid or payable by the fund to a former member after retirement.

Subd. 24. Optional annuity. "Optional annuity" means the allowance paid or payable by the fund to the designated optional annuity beneficiary of a member or former member, pursuant to an optional annuity form selected at or before retirement, or to the spouse of a deceased member under section 353.32, subdivision 1a.

Subd. 25. [Repealed, 1973 c 753 s 85]

Subd. 26. [Repealed, 1971 c 106 s 40]

Subd. 27. Benefit. "Benefit" means a monthly survivor benefit paid or payable by the fund to a surviving spouse or a dependent child and also includes a monthly disability benefit paid or payable by the fund to a member who is totally and permanently disabled.

Subd. 28. Retirement. (a) "Retirement" means the commencement of payment of an annuity based on a date designated by the board of trustees. This date determines the rights under this chapter which occur either before or after retirement. A right to retirement is subject to termination of public service under subdivision 11a. A right to retirement requires a complete and continuous separation for 30 days from employment as a public employee and from the provision of paid services to that employer.

(b) An individual who separates from employment as a public employee and who, within 30 days of separation, returns to provide service to a governmental subdivision as an independent contractor or as an employee of an independent contractor, has not satisfied separation requirements under paragraph (a).

(c) A former member of the basic or police and fire fund who becomes a coordinated member upon returning to eligible, nontemporary public service, terminates employment before obtaining six months' allowable service under subdivision 16, paragraph (a), in the coordinated fund, and is eligible to receive an annuity the first day of the month after the most recent termination date shall not accrue a right to a retirement annuity under the coordinated fund. An annuity otherwise payable to the former member must be based on the laws in effect on the date of termination of the most recent service under the basic or police and fire fund and shall be retroactive to the first day of the month following that termination date or one year preceding the filing of an application for retirement annuity as provided by section