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Article for *Minnesota Fire Chief*

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### **Fire Relief Working Group Bill Signed Into Law**

*By Rebecca Otto, State Auditor*

The Omnibus Retirement Bill, which included the Fire Relief Association Working Group Bill, was signed by the Governor on May 15. Most of the changes for fire relief associations in the new law were based on suggestions made by the Volunteer Fire Relief Association Working Group convened by the Office of the State Auditor (OSA). The Working Group's proposals included technical changes, substantive changes, and updates to current drafting standards.

#### **How Will the Statute Changes Affect Your Fire Relief Association?**

The technical changes in the new law most likely will not result in required changes to your relief association's bylaws unless your bylaws reference specific statutory citations or language. If your relief association bylaws do reference specific statutory citations or language, you should compare your bylaw language with the new statutory language. We will update our Selected Relevant Statutes booklet once the 2010 statutes are available for publication. This booklet, which will be posted on the OSA website at [www.auditor.state.mn.us](http://www.auditor.state.mn.us), will serve as a helpful reference when reviewing and updating your bylaws.

Several of the Working Group's recommendations adopted by the legislature were substantive. Below is a brief list of questions to help determine whether your relief association will need to amend its bylaws. A "yes" answer to any of the questions could indicate that your relief association may be required to amend its bylaws to comply with the statutory changes, or to take advantage of new statutory authority.

**1. Do you want to allow members to resume active membership after a leave of absence, break in service, or receipt of a service pension?**

During the 2009 legislative session, major changes were made to allow for greater flexibility in how service pensions are handled for firefighters who resume active service with a fire department and active membership in a relief association after a break in service or after retirement and receipt of a service pension.

After receiving feedback from some relief associations that were using the 2009 "return to service" law, the Working Group proposed several changes to further improve the law. Highlights of the new "return to service" law include:

- Through their bylaws, relief associations may permit firefighters to resume active membership in the relief association. If the bylaws allow the firefighters to resume active membership, a firefighter is eligible to accrue additional service credit and, if the firefighter becomes vested again, be paid a second service pension. The law requires a 60-day period of separation and allows your relief association to implement certain restrictions in its bylaws. Firefighters can resume active service with a volunteer fire department after retirement and receipt of a service pension without needing to repay the pension amount as previously required, even if they don't resume active membership in the relief association.
- Former members who are receiving monthly service pensions from a relief association may resume active service and membership and, if the relief association bylaws allow, may continue receiving the monthly pension payments during the resumption period of service. If the member becomes vested again, the member is eligible for an increased pension based on the additional service credit. The firefighter must resume active membership in the relief association, in addition to active service with the fire department, to continue receiving the monthly pension payments during the resumption period of service.
- Previously, any member who had a break in service of at least 60 days, including an approved leave of absence, was subject to the requirements of the "return to service" law if the member resumed active service and membership. The new law gives any member who has an approved leave of absence not exceeding one year an automatic exemption to the minimum period of resumption service requirement of the "return to service" law. This means that members with an approved leave of absence not exceeding one year may resume active service and membership and begin accruing active service credit again immediately. Members generally would not be eligible to receive service credit during their leave of absence.
- The new law allows the relief association, through its bylaws, to exempt members with a break in service (an unapproved leave) not exceeding one year from the minimum period of resumption service requirement, provided that the member hasn't received a service pension or disability benefit from the association. If a relief association adopts such a bylaw amendment, it would mean that any member with a break in service of less than one year who hasn't received a service pension or disability benefit would automatically be exempt from the minimum period of resumption service requirement and could begin accruing service credit again immediately upon a resumption of service and membership. Members generally are not eligible to receive service credit during their break in service.

Relief associations may only maintain or establish conditions on resuming service and membership after a leave of absence or break in service that are consistent with this new law. If your relief association had previously established conditions on resuming active service and membership in its bylaws, your relief association should promptly review its bylaws to ensure that the conditions comply with the new statutory requirements.

Detailed flow charts are available on the OSA website that illustrate the different options and scenarios for calculating pensions of members who return to active service and membership after a leave of absence, a break in service, or receipt of a service pension. Sample bylaw language is available for the return-to-service options on the OSA website. The sample bylaw language is meant to serve as a general resource guide. Your relief association should consult an attorney for answers to specific questions regarding your relief association's bylaws.

**2. Do you want to allow for transfers to the Minnesota Deferred Compensation Plan?**

Volunteer firefighters are eligible to participate in the Minnesota Deferred Compensation Plan, which offers a tax-deferred savings plan that can help supplement other retirement benefits. Volunteer firefighters may also choose to "roll over" their relief association service pension to their deferred compensation account if all of the following three conditions are met: 1) the relief association's bylaws authorize rollovers to the Minnesota Deferred Compensation Plan; 2) the volunteer firefighter participates in the Plan at the time of retirement; and 3) the retiring firefighter requests in writing that the relief association roll over his or her service pension. Sample bylaw language is available on the OSA website that can be used as a reference for relief associations that choose to allow retiring members this option.

**3. Are you a defined contribution plan that would like to credit investment returns to inactive members?**

State law clearly provided defined contribution plans with authority to credit active and deferred members with investment allocations, but it was unclear whether these plans had the authority to credit inactive members with investment returns. Clear authority to do so is included in the new law. Defined contribution plans may credit investment returns to the accounts of inactive members as permitted in the bylaws. Sample bylaw language that authorizes a relief association to credit investment returns to inactive members is provided on the OSA website.

**4. Do you offer survivor benefits?**

The order of eligibility for survivor benefits was modified in the new law. The payment of survivor benefits is optional. If a relief association chooses to offer survivor benefits, the order of eligibility for the benefits, and the benefit calculation method, is defined by state statute. The order of benefit distribution is different for defined contribution plans, lump sum plans, and monthly or monthly/lump sum combination plans.

In addition, if a firefighter has no surviving children, the firefighter's surviving spouse may now waive, in writing, wholly or partially, the spouse's entitlement to a survivor benefit. This change was enacted to allow flexibility to address individual situations. One example of such a situation is when another family member has medical needs and could be better served by the survivor benefit payment.

Finally, for members of a defined contribution plan, a lump sum plan, or a monthly/lump sum combination plan where the member has elected a lump sum benefit, a trust created under Minnesota Statutes, Chapter 501B, may be a designated beneficiary. In addition, if a firefighter creates a trust that is payable to the firefighter's surviving children and there is no surviving spouse, the survivor benefit may be paid directly to the trust. This change was made to accommodate situations in which a firefighter and the firefighter's spouse both

become deceased. Sample survivor benefit bylaw provisions that can be used for reference purposes are available on the OSA website.

**5. Do you define the term “surviving spouse” in your bylaws?**

The definition of the term “surviving spouse” was removed from state law. The term is not required to be defined in the bylaws.

**Additional Information and Resources**

Fire Relief Associations cannot transfer money from their special fund if money is deposited in error. A narrow exception to this rule was included in the Fire Relief Association Working Group Bill. The new law gives the OSA authority to allow fire relief associations to transfer money from the special fund when money is deposited into the special fund in good faith error. Evidence must be provided to the OSA that the error occurred in good faith. The OSA may require that the relief association obtain a written legal opinion concluding that the transfer would be consistent with federal and state law, before the transfer is authorized. This change was intended to facilitate correction of bank coding errors or charitable gambling deposit errors. Transfers out of the special fund will be allowed only in limited instances and only after sufficient evidence and documentation is provided.

The Working Group Bill provisions are located in Article 13 of the 2010 Omnibus Retirement Bill. The entire bill can be found at:

<https://www.revisor.mn.gov/laws/?id=359&doctype=chapter&year=2010&type=0>

The Pension Division of the OSA is conducting a series of online trainings for relief associations on a number of issues. Information on upcoming live online trainings and recorded trainings can be found on our website at:

<http://www.auditor.state.mn.us/default.aspx?page=trainingopportunities>

The Pension Division's 2010 Legislative Update, which includes flow charts and sample bylaw language, is available on our website at:

<http://www.auditor.state.mn.us/default.aspx?page=pensionDocs>