

**Minnesota Volunteer Fire Relief Association
Working Group Meeting**

Office of the State Auditor
Monday, December 8, 2014
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 December 2, 2014 Meeting Minutes
- III. Continuation of Discussion on Maximum Benefit Levels and Penalty**
Exhibit B.
- IV. Review of Draft Language Clarifying Relief Association Affiliation Requirements**
Exhibit C.
- V. Review of Draft Language Defining When Membership Begins**
Exhibit D.
- VI. Discussion of Requirement that Relief Association Service Credit be Limited to Volunteer Firefighter Service**
- VII. Other Business**
- VIII. Next Meeting**
January 2015, date to be scheduled
11 a.m. to 1 p.m.
Office of the State Auditor
- IX. Adjournment**

Individuals with disabilities who need a reasonable accommodation to participate in this event, please contact Rose Hennessy Allen at (651) 296-5985 or (800) 627-3529 (TTY) by December 5, 2014.

Volunteer Fire Relief Association Working Group

Office of the State Auditor
Tuesday, December 2, 2014
11 a.m. to 1 p.m.

Members Present

Steve Donney, City of Harmony Mayor
Dennis Feller, City of Lakeville Finance Director
Bruce Hemstad, Bemidji Fire Relief Association Secretary (defined benefit lump sum plans)
Dave Jaeger, Mahnomon Fire Relief Association Vice President (defined benefit lump sum plans)
Aaron Johnston, Coon Rapids Fire Relief Association Treasurer (defined contribution plans)
Larry Martin, Legislative Commission on Pensions and Retirement Director
Rebecca Otto, State Auditor
Bruce Roed, Mentor Fire Relief Association Trustee (defined contribution plans)
Mark Rosenblum, Minnesota State Fire Department Association Representative (defined benefit lump sum plans)
Kevin Wall, Lower Saint Croix Valley Fire Relief Association President (defined benefit lump sum plans)
Nyle Zikmund, Minnesota State Fire Chiefs Association Representative (defined benefit monthly plans)

Members Excused

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

Others Present

Mary Chamberlain, Abdo, Eick & Meyers Representative
Aaron Dahl, Office of the State Auditor Pension Analyst
Veronika Gutsalyuk, Wells Fargo Advisors Representative
Rose Hennessy Allen, Office of the State Auditor Pension Director
Michael Johnson, Office of the State Auditor Pension Analyst
Mark Kerr, Office of the State Auditor Assistant Legal Counsel
Mike Luger, Eden Prairie Fire Department Representative
Brian McKnight, Wells Fargo Advisors Representative
Blake Pekkala, Office of the State Auditor Pension Intern
Jeff Reed, Office of the State Auditor Supervisor of Special Investigations

The following motions were duly made, seconded and approved:

- RESOLVED to approve the November 13, 2014, Working Group Meeting Minutes;
RESOLVED to move forward with the concept of requiring multiple signatures on special fund checks; and
RESOLVED to move forward with the concept of providing the Office of the State Auditor with discretion to exempt relief associations from the penalty that occurs if a service pension is paid using a benefit level that exceeds the statutory maximum if certain conditions are met.

I. Call to Order

Hennessy Allen called the meeting to order.

II. Review and Approval of Working Group Meeting Minutes

The members reviewed the November 13, 2014, meeting minutes that had been provided in advance. Hemstad made a motion to approve the meeting minutes. Feller seconded the motion that then was adopted unanimously.

III. Review of Draft Language Requiring Multiple Signatures on Checks

Hennessy Allen explained that relief associations currently are not required by law to have multiple signatures on their checks. She explained that most other government entities in Minnesota, including cities, towns, and counties, are generally required to have multiple signatures on their checks. Multiple signatures are an important part of an entity's system of internal controls. When more than one person signs a check, each person is verifying that the governing body has approved the check for payment. The Group reviewed draft language that would require special fund disbursements paid by check to be signed by the treasurer and at least one other trustee who is designated by the board of trustees.

Zikmund asked if the draft language would allow for special fund payments to be made electronically. Kerr responded that the draft language permits electronic payments while still maintaining internal controls by requiring that policies and procedures be established that provide for authentication of the disbursement. Roed suggested that the draft language be updated to prohibit the pre-signing of checks. He indicated pre-signed checks are prohibited by the Gambling Control Board statutes. Kerr will review the Gambling Control Board statutes for an example of such a prohibition and report back to the Group. Zikmund made a motion to move forward with the concept of the draft language. Hemstad seconded the motion that then was adopted unanimously.

IV. Discussion of Maximum Benefit Levels and Penalty

Auditor Otto explained that relief associations with defined-benefit plans (lump-sum, monthly, and monthly/lump-sum combination plans) are required to calculate annually the maximum allowable benefit level. The Office of the State Auditor (OSA) provides relief associations with a form called the Maximum Benefit Worksheet (MBW) for performing the calculation. The calculation is an average of a relief association's non-investment primary revenue sources for the prior three years on a per-member basis. The primary revenue sources included in the calculation are the amounts of state aid and municipal contributions received, and ten percent of the relief association's surplus. Auditor Otto also explained that if a relief association pays a service pension using a benefit level that exceeds the maximum allowable benefit level, statute requires that penalties be imposed. The penalties are disqualification from receiving fire state aid and

a requirement that the relief association treasurer recover the amount of the overpaid service pension from any retired firefighter who received an overpayment.

Hennessy Allen described issues regarding the calculation to determine the maximum allowable benefit level. She also explained that penalties are imposed if a service pension is paid in error with no opportunity for the relief association to correct the error.

Martin provided the Group with a thorough history of the statute, explaining how the calculation was devised and why the draconian penalty was put in place. Martin shared that prior to the creation of the flexible service pension maximums, only one maximum lump-sum benefit level and one maximum monthly benefit level existed. Relief associations were required to obtain special legislation to increase their benefit levels above these maximums. The single limits were not effective and led to the creation of the Volunteer Firefighter's Relief Association Financing Guidelines Act of 1979 that put in place much of the law related to volunteer fire relief associations.

The flexible service pension maximums require that relief associations pay about 70 percent of the ongoing normal cost of the benefit level. The three-year average on which the calculation is based minimizes fluctuations in contributions or investment earnings that would be experienced from one year to the next. Martin recommended that communities determine what benefit level is needed to retain firefighters and then put a plan in place, which may require ongoing municipal contributions, for the relief association to reach that benefit level.

The Group agreed that generally, over time, the calculation is working as intended. The Group suggested that the OSA provide education to relief associations and their affiliated municipalities on the purpose of the MBW and consider changing the form name. The Group also suggested that the OSA consider providing a website calculation that uses a five-year average as a tool for relief association trustees. The Group also discussed whether required municipal contributions should be included in the calculation.

Luger explained to the Group that the Eden Prairie Fire Relief Association is interested in increasing the lump-sum maximum from the current \$10,000. He stated that for the monthly/lump-sum combination plans, the monthly benefit levels result in a much larger benefit over the life of the firefighter than a lump-sum benefit calculated at a corresponding benefit level. The Group agreed to explore increasing the \$10,000 lump-sum maximum for a handful of unique plans.

Finally, the Group agreed that the penalty provision should be changed so that a relief association would not automatically be disqualified from receiving fire state aid if a pension is paid using a benefit level above the maximum. The Group reviewed draft language that would give discretion to the OSA to certify the relief association as eligible for fire state aid after the presentation of sufficient evidence that the error occurred in good faith and the treasurer of the relief association has begun to take steps to recover the

amount of the overpaid service pension. Zikmund made a motion to move the concept of the draft language forward. Jaeger seconded the motion that then was adopted unanimously.

V. Other Business

There was no other business.

VI. Next Meeting

Monday, December 8, 2014

11:00 a.m. to 1:00 p.m.

Office of the State Auditor

VII. Adjournment

The meeting was adjourned at 1:00.

Exhibit B

Maximum Benefit Levels

Topic:

Statute requires that relief associations with defined-benefit plans (lump-sum, monthly, and monthly/lump-sum combination plans) calculate annually the maximum allowable benefit level. The Office of the State Auditor (OSA) provides relief associations with a form called the Maximum Benefit Worksheet (MBW) for performing the calculation.

The calculation is an average of a relief association's non-investment primary revenue sources for the prior three years on a per-member basis. The primary revenue sources included in the calculation are the amounts of state aid and municipal contributions received, and ten percent of the relief association's surplus.

If a relief association pays a service pension using a benefit level that exceeds the maximum allowable benefit level, statute requires that penalties be imposed. The penalties are disqualification from receiving fire state aid and a requirement that the relief association treasurer recover the amount of the overpaid service pension from any retired firefighter who received an overpayment.

Issues and Discussion Items:

Three issues have been brought to the OSA's attention that are described below.

- 1) **Calculation.** Relief associations have questioned the appropriateness of the calculation used to determine the maximum allowable benefit level. In years when investment markets are performing poorly and a relief association has a deficit, the association may receive large required contributions from the municipality. These large municipal contributions increase the maximum allowable benefit level. Conversely, a relief association with a surplus may not be authorized to increase its benefit level, even though sufficient funds are available, because the association is limited by the calculated maximum.
- 2) **Penalty.** A relief association that pays a service pension in error using a benefit level above the maximum has no opportunity to fix the error before penalties are imposed. A relief association could lose thousands of dollars in fire state aid due to a good faith error that resulted in a service pension being paid just slightly in excess of the maximum. The State Auditor has no authority to exercise discretion.
- 3) **Maximums.** Interest has been expressed in increasing the maximums, which are currently at \$10,000 per year of service for lump sum benefits and \$100 payable per month for each year of service for monthly benefits.

Optional Changes:

424A.02 DEFINED BENEFIT RELIEF ASSOCIATIONS; SERVICE PENSIONS.

Subd. 3a. **Penalty for paying pension greater than applicable maximum.** (a) If a defined benefit relief association pays a service pension greater than the maximum service pension associated with the applicable average amount of available financing per active covered firefighter under the table in subdivision 3, paragraph (c) or (d), whichever applies, the maximum service pension under subdivision 3, paragraph (f), or the applicable maximum service pension amount specified in subdivision 3, paragraph (g), whichever is less, the state auditor shall:

(1) disqualify the municipality or the nonprofit firefighting corporation associated with the relief association from receiving fire state aid by making the appropriate notification to the municipality and the commissioner of revenue, with the disqualification applicable for the next apportionment and payment of fire state aid; and

(2) order the treasurer of the applicable relief association to recover the amount of the overpaid service pension or pensions from any retired firefighter who received an overpayment.

(b) Fire state aid amounts from disqualified municipalities for the period of disqualifications under paragraph (a), clause (1), must be credited to the amount of fire insurance premium tax proceeds available for the next subsequent fire state aid apportionment.

(c) The amount of any overpaid service pension recovered under paragraph (a), clause (2), must be credited to the amount of fire insurance premium tax proceeds available for the next subsequent fire state aid apportionment.

(d) The determination of the state auditor that a relief association has paid a service pension greater than the applicable maximum must be made on the basis of the information filed by the relief association and the municipality with the state auditor under sections 69.011, subdivision 2, and 69.051, subdivision 1 or 1a, whichever applies, and any other relevant information that comes to the attention of the state auditor. The determination of the state auditor is final. An aggrieved municipality, relief association, or person may appeal the determination under section 480A.06.

(e) Upon notification by the appropriate relief association official to the office of the state auditor of a service pension amount overpayment made as a result of a maximum benefit calculation error by the relief association, after the presentation of sufficient evidence that the error occurred in good faith and if the treasurer of the applicable relief association has begun to take steps to recover the amount of the overpaid service pension or pensions from any retired firefighter who received an overpayment, the state auditor may take into consideration the evidence of good faith presented to and may certify the municipality or nonprofit firefighting corporation associated with the relief association for fire state aid. Notwithstanding paragraph (c), the amount of any overpaid service pension recovered under this paragraph must be credited to the special fund of the relief association.

Exhibit C

Relief Association Affiliation Requirements

Topic:

A question was raised as to whether more than one volunteer fire relief association could be affiliated with a municipal fire department or independent nonprofit firefighting corporation. Minnesota statutes are written based on a fire department having only one affiliated relief association. Administrative problems, including the division of fire state aid, would arise if a fire department were to have multiple affiliated relief associations. Draft language is provided below that would clarify the legislative intent that a fire department may have only one affiliated volunteer fire relief association.

Optional Change:

424A.002 AUTHORIZATION OF NEW OR CONTINUING VOLUNTEER FIREFIGHTERS RELIEF ASSOCIATIONS.

Subdivision 1. **Authorization.** A municipal fire department or an independent nonprofit firefighting corporation, with approval by the applicable municipality or municipalities, may establish a new volunteer firefighters relief association or may retain an existing volunteer firefighters relief association. A municipal fire department or an independent nonprofit firefighting corporation may be associated with only one volunteer firefighters relief association.

Subd. 2. **Defined benefit or defined contribution relief association.** The articles of incorporation or the bylaws of the volunteer firefighters relief association must specify that the relief association is either a defined benefit relief association subject to sections 424A.015, 424A.02, and 424A.091 to 424A.094 or is a defined contribution relief association subject to sections 424A.015 and 424A.016.

Exhibit D

Relief Association Membership

Topic:

Relief association trustees are seeking clarity on precisely when membership in a relief association begins. Some fire departments require probationary periods or training periods when a firefighter is first hired. Questions have arisen about whether relief association membership begins on the date a firefighter is hired, for example, or following completion of any required probationary or training period. Draft language is provided below that defines when membership in a relief association begins while maintaining flexibility for communities to establish local requirements.

Optional Change:

424A.001 DEFINITIONS.

Subdivision 1. **Terms defined.** Unless the context clearly indicates otherwise, as used in this chapter, the terms defined in this section have the meanings given.

...

Subd. 12. **Membership start date.** Membership in a volunteer firefighters relief association begins upon a volunteer firefighter's start date with the municipal fire department or independent nonprofit firefighting corporation with which the relief association is directly associated or, if minimum requirements are established, upon the volunteer firefighter's completion of the minimum requirements.