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Statement of Position Maintaining a General Fund after Joining the Statewide Plan

The Statewide Volunteer Firefighter Retirement Plan (Plan), created by the Legislature, is a voluntary plan administered by the Public Employees Retirement Association (PERA).¹ When a volunteer fire department joins the Plan, PERA takes over the administration of the firefighters' pension fund. The Minnesota State Board of Investment (SBI) invests the assets of the Plan.

Volunteer fire relief associations have long been able to invest their assets through the SBI, while maintaining control over and responsibility for the payout of service pensions and benefits. Joining the Plan administered by PERA is different. Under the Plan, a volunteer fire relief association's entire special fund is transferred to the SBI *and* the relief association no longer pays service pensions or benefits as it no longer exists as a public pension fund.

When a fire department joins the Plan, the firefighters may choose to continue operating the affiliated relief association as a nonprofit corporation and maintain the relief association's general fund. However, these relief associations must make changes to the structure of their board of trustees and to their governing documents to remain in compliance with Minnesota law.

Board of Trustees Structure

A relief association that continues to operate as a nonprofit corporation must change the structure of its board of trustees. The boards of trustees for these relief associations must be comprised of five trustees.² One trustee must be the fire chief, and four trustees must be elected by and from the relief association membership.

Articles of Incorporation and Bylaws

A relief association electing to maintain its general fund and operate as a nonprofit corporation after the affiliated fire department has joined the Plan must make changes to its articles of incorporation and bylaws. Changes to these documents must reflect that the

¹ See Minn. Stat. Ch. 353G.

² See Minn. Stat. § 353G.06, subd. 2(1).

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relief association does not pay service pensions or benefits and no longer controls any public funds.

Minnesota law is clear that a relief association with an affiliated fire department that joins the Plan is not authorized to receive the proceeds of any state aid or any municipal funds, and cannot pay service pensions or benefits from its general fund that were not authorized as a general fund disbursement under the articles of incorporation or bylaws of the relief association in effect before the fire department joined the Plan.³ By filing new articles of incorporation and adopting new bylaws, the relief association is acknowledging that it no longer administers a pension fund. Any references to a special fund or to the payment of pensions or benefits from public funds should be removed from the governing documents.

The relief association also should change its articles of incorporation and bylaws to clarify that the general fund continues to be governed by Minnesota Statutes, section 424A.06 (the section of State law that pertains to volunteer fire relief association general funds). The new articles of incorporation must be filed with the Minnesota Office of the Secretary of State (SOS). The new bylaws should be kept on file with the relief association.

A relief association that elects to maintain its general fund will follow the Minnesota Nonprofit Corporation Act to make changes to its articles of incorporation and bylaws in the future.⁴

The relief association's name, however, need not change. While the State law creating the Plan makes clear that relief associations continuing to operate as nonprofit corporations after their affiliated fire departments join the Plan no longer pay service pensions or benefits, these nonprofit corporations are still called "relief associations" in the statute, which may contribute to confusion concerning the nature of the new nonprofit corporations.

Reporting Requirements

When a fire department joins the Plan, the affiliated relief association no longer falls within the Office of the State Auditor's area of authority because the relief association's general fund does not contain public funds.

Relief associations that continue to operate as nonprofit corporations must complete an annual renewal with the SOS to keep the relief association's status as a Minnesota nonprofit corporation active.

³ See Minn. Stat. § 353G.06, subd. 2(3) and (4).

⁴ See Minn. Stat. §§ 317A.131 to .141 (how to amend the articles of incorporation) and § 317A.181 (how to amend the bylaws).

Nonprofit corporations, including relief associations, which perform fundraising activities, may have reporting requirements with the Minnesota Attorney General (AG)'s Office. Relief associations should review the information found under the "charities" tab on the AG's website to determine whether they are required to file a report. Relief associations should contact the AG's Office with any questions regarding reporting requirements related to fundraising.

Relief associations that want to continue to operate a charitable gambling fund in addition to their general fund should contact the Minnesota Gambling Control Board.

Relief associations may also have federal reporting requirements with the Internal Revenue Service (IRS). Relief associations should contact the IRS with any questions about their reporting requirements or about how operating solely as a nonprofit corporation and not as a public pension fund could affect their tax-exempt status.

It is important for the board of trustees of a relief association that chooses to maintain its general fund after the affiliated fire department joins the Plan to obtain guidance from an attorney who has experience working with nonprofit corporations.