

HF 4107/SF 4123 puts into bill form the recommendations of the Work Group on Relief Association Conversions and Dissolutions regarding relief association dissolutions and the disposition of surplus assets, as set forth on pages 16-24 of the:

**Report of the Work Group on
Firefighter Relief Association
Conversions and Dissolutions**

February 21, 2019

Table of Contents

Introduction	1
Establishment of the Work Group.....	1
<i>Purpose</i>	<i>1</i>
<i>Members.....</i>	<i>2</i>
<i>Required deliverable</i>	<i>3</i>
Meetings of the Work Group	3
<i>Agendas</i>	<i>3</i>
<i>Data on overfunding.....</i>	<i>4</i>
<i>Accomplishments</i>	<i>5</i>
Fire Chief Survey	5
<i>Survey responses.....</i>	<i>5</i>
Converting from Defined Benefit to Defined Contribution	7
<i>Objective.....</i>	<i>7</i>
<i>Applicable federal law</i>	<i>8</i>
<i>Applicable state law.....</i>	<i>8</i>
<i>Step I: Board of trustees resolutions</i>	<i>9</i>
<i>Step II: Determination of the value of pension benefits.....</i>	<i>13</i>
<i>Step III: Notice to firefighters</i>	<i>13</i>
<i>Step IV: Notice to municipality and State Auditor</i>	<i>14</i>
<i>Step V: Implement the conversion</i>	<i>14</i>
<i>Example: Simplified conversion and impact on a firefighter</i>	<i>15</i>
Disposition of Surplus Upon Plan Termination	16
<i>Objective.....</i>	<i>16</i>
<i>Applicable federal law</i>	<i>16</i>
<i>Applicable state law — 424B.20, Subdivision 1</i>	<i>16</i>
<i>Maplewood Firefighters Relief Association and the City of Maplewood</i>	<i>17</i>
<i>Broaden application of the statutes</i>	<i>18</i>
<i>Amend to require automatic dissolution and plan termination</i>	<i>18</i>

Applicable state law — 424B.20, Subdivisions 2-5 19

Amend procedures 20

Immediate full vesting..... 20

Benefit level increases 20

Recalculation of benefits 21

Amend to allow immediate distributions..... 21

Supplemental benefits..... 22

Pre-termination notice 22

Applicable state law — 424B.20, Subdivision 4, Paragraph (b) 23

Disposition of surplus assets 23

Missing firefighters..... 24

Repeal 2018 legislation on surplus..... 24

Conclusion **24**

LCPR staff contact..... 26

Exhibit A Financial and Investment Data for Lump Sum and Monthly Plans For the Year Ended December 31, 2017

Exhibit B Fire Chief Survey Respondent Map

Exhibit C Fire Chief Survey PowerPoint

Disposition of Surplus Upon Plan Termination

Objective

The work group framed the objective for this task as follows:

Propose legislation alternatives regarding disposition of surplus assets upon plan termination or relief association dissolution.

Applicable federal law

Applicable federal law requires full vesting of all members, active and inactive, as of the date of termination of a qualified plan. Assets in excess of fully vested accrued benefits can be transferred to the employer or to the firefighters or can be allocated among the employer and firefighters.

Applicable state law — 424B.20, Subdivision 1

Minnesota Statutes, Sections 424B.20 and 424B.21, address plan termination and dissolution of a relief association, but important issues are not addressed.

Section 424B.20 is titled “Dissolution without Consolidation” and, under Subdivision 1, applies to two situations:

- When the fire department dissolves or is eliminated by the municipality or firefighting corporation.
- When the relief association is dissolved or eliminated with municipal approval, but the fire department is not dissolved or eliminated.

The first situation might arise if a municipality decides to contract with another municipality to provide firefighting services and eliminates its fire department. Without active firefighters, the relief association may decide to terminate the pension plan and dissolve the relief association. The second situation might arise if a municipality terminates the services of all non-career firefighters and decides to hire only career firefighters to staff the fire department. Career firefighters are covered by the PERA Police and Fire Plan, so the relief association may decide there is no reason to continue in existence.

Situations that are not covered by the statute:

- A municipality eliminates its fire department but the relief association does not want to dissolve or terminate its pension plan;
- A relief association wishes to terminate its pension plan, even though the fire department is ongoing and the relief association will continue;
- A relief association wants to dissolve and terminate its pension plan, but the municipality will not give its approval;
- The municipality terminates the services of all non-career firefighters and decides to staff the fire department with only career firefighters. The relief association does not want to dissolve or terminate its pension plan.

***Maplewood
Firefighters
Relief
Association and
the City of
Maplewood***

The situation described in the last bullet, above, actually occurred in early 2018 when the City of Maplewood terminated the services of its non-career firefighters, but continued its fire department with career firefighters. The affiliated Maplewood Firefighter Relief Association did not wish to dissolve and attempted to convert its defined benefit plan to a defined contribution plan in order to allocate the substantial surplus to firefighter accounts. The City filed a lawsuit to stop the conversion and allocation of the surplus. The parties were able to reach a settlement, premised on legislation being enacted that would allow for the settlement to be implemented. The legislation was included in the Act, at Chapter 211, Article 14, Section 30, and provided for, among other details, the following:

- 100% vesting of all firefighters who had been terminated in early 2018;
- Increase in the benefit level to \$11,000, notwithstanding the statutory cap of \$10,000;
- Dissolution of the relief association and its pension plan;
- Transfer of the surplus to the City;
- Effective only if approved by the board of trustees of the relief association, a majority of its members, and the City council.

Broaden application of the statutes

The work group agreed that the statutes governing dissolution of relief associations need not be limited to certain situations, as is the case under current law, and should apply broadly to all dissolutions, whatever the circumstances. Accordingly, Minnesota Statutes, Section 424B.20, Subdivision 1, should be amended as follows (text in bold to more easily distinguish the text to be retained from the text to be stricken):

~~“This section applies if the fire department associated with a volunteer firefighters relief association is dissolved or eliminated by action of the governing body of the municipality in which the fire department was located or by the independent nonprofit firefighting corporation, whichever applies, and no consolidation with another volunteer firefighters relief association under sections 424B.01 to 424B.10 is sought,~~ **or if a volunteer firefighters relief association is dissolved or eliminated with municipal approval, but the fire department associated with the volunteer firefighters relief association is not dissolved or eliminated, and no consolidation with another volunteer firefighters relief association under sections 424B.01 to 424B.10 is applicable.”**

Amend to require automatic dissolution and plan termination

To avoid another situation similar to Maplewood, the members of the work group agreed that Section 424B.20, Subdivision 1, should be amended to add the requirement that a relief association will be automatically dissolved and the pension plan automatically terminated if a municipality terminates the services or ends the employment of all of its non-career firefighters. Under current state law, the relief association and the pension plan are ongoing and would continue to receive fire state aid, even though there are no longer any active firefighters receiving credit for more years of service.

LCPR staff advised the work group that, under applicable federal law, terminating the services of all active firefighters would result in a “partial termination” of the plan. A partial termination is not actually a termination of the plan, but instead is action by the employer that ends the continued accrual of benefits by a substantial percentage of

the workforce. The most significant impact of a partial termination is that all affected firefighters must become fully vested in their benefit or plan account.

Note: LCPR staff further advised that the full vesting requirement in the case of a partial termination and other requirements with which relief association pension plans must comply in order to maintain their tax-qualified status do not apply to relief associations that are truly volunteer. The pension plans of relief associations whose non-career firefighters do not receive any compensation (either per hour or per call) would technically not be able to be considered tax-qualified. In the interest of uniformity, however, all proposed legislation should, for now, apply with equal force to the truly volunteer relief associations as to the relief associations whose members receive compensation.

Applicable state law — 424B.20, Subdivisions 2-5

Minnesota Statutes, Section 424B.20, Subdivisions 2-5, establishes the following procedures for dissolving a relief association and terminating the pension plan:

The relief association board of trustees is required to:

1. Calculate assets, accounts payable, and pension benefit liabilities;
2. Liquidate enough special fund assets to pay “legal obligations;”
3. Prepare a schedule of firefighters with each firefighter’s pension amount, service, and pension payment date;
4. (a) Transfer remaining assets to the municipality for deposit into a trust that is invested in compliance with Minnesota Statutes, Section 424A.095 (same statute that governs investment of the special fund)

OR

(b) Purchase annuity contracts that will pay out pension benefits at retirement age (Minnesota Statutes, Section 424B.21).

Note: Staff advised and the work group concurred that proposed legislation should revise the last sentence of Minnesota Statutes, Section 424B.21, which requires title to annuity contracts to be transferred to the trust. Staff

noted that this seems to be a drafting error, since a trust is not necessary when annuity contracts are purchased. Title to annuity contracts should instead be required to be transferred to the municipality.

5. Transfer the records of the relief association to the municipality; and
6. Notify the Commissioner of Revenue, State Auditor, and Secretary of State within 30 days of the dissolution.

Amend procedures

The work group discussed and all members ultimately agreed that current state law, which both limited the ability of relief associations to increase the benefit level when they believe there is adequate surplus to fund the increase and requires payment of any surplus to the municipality upon termination of the plan, should be amended. Accordingly, the work group determined that Minnesota Statutes, Section 424B.20, should be amended to provide the following procedure for dissolving a relief association and terminating the related pension plan and paying out any surplus, that is, any assets in excess of benefit liabilities:

Immediate full vesting

1. All firefighters with any accrued benefit (that is, any years of service), who have not received their benefit yet, would become 100% vested on the plan termination date.

Benefit level increases

2. The relief association board of trustees may approve an amendment to their articles or bylaws to increase the benefit level, up to 125% of the current statutory maximum. With the statutory maximum currently at \$10,000, this means the relief association could approve an increase in the benefit level of up to \$12,500. If there is not enough surplus to fund a benefit level of \$12,500, the relief association may approve any lower benefit level that will result in the reduction of the surplus, even to zero. The board will need to determine whether only active firefighters as of the plan termination date will be entitled to the increased benefit or whether inactive firefighters will also receive the increase.

Note: To permit the foregoing process, which would likely require amendments to the relief association bylaws, any requirement in state law for municipal consent to bylaws amendments will need to be

amended, to eliminate the consent requirement, if the increase is in connection with the termination of the plan. This law change would alleviate concerns, discussed by the work group, that the municipality could terminate the services of all non-career firefighters before the effective date of a benefit level increase.

Recalculation of benefits

3. Current statutes, which require the determining the value of assets, accounts payable, and benefit liabilities would be retained. The calculation of benefit liabilities would be done by recalculating the benefits for all firefighters, taking into account the foregoing steps, which require full vesting and allow for an increase in the benefit level. Similarly, the current provision requiring the preparation of a schedule setting forth each firefighter's pension amount and service would be retained.

Amend to allow immediate distributions

4. The work group discussed the next step in the current statutory procedure which requires the relief association to transfer its assets to the municipality or an insurance company to be held for payment as firefighters reach age 50. The work group recommends amending this step to require the relief association to make distributions to all firefighters immediately (with the option to elect a rollover), regardless of the age of the firefighter. In other words, in the case of a plan termination, firefighters would not have to wait until age 50 to receive a distribution of their pension benefits.

This will allow for the elimination of the statutory language that provides for the transfer of assets to the municipality for distribution as firefighters reach age 50 or to an annuity provider that will distribute benefits as firefighters reach age 50.

Reasons discussed by the work group for preferring immediate distribution rather than transfer to the municipality or to purchase annuities include:

- Elimination of the need for the municipality to manage these assets, and for the firefighters to have to trust that the municipality will manage the assets prudently for potentially many years; and

**Supplemental
benefits**

- Elimination of the expense of purchasing an annuity from an insurance company, which reduces the value of the pension benefits.

5. The work group noted that, under Minnesota Statutes, Section 424A.10, firefighters who are at least age 50 and receive a distribution are entitled to a supplemental benefit. Proposed legislation will amend this statute to allow for payment of the supplemental benefits to all firefighters, regardless of age, and any survivors who would otherwise be entitled to the payment under current law. The relief association would be required to reserve enough assets to pay the supplemental benefits as required by current statute.

Section 424A.10 also provides for reimbursement of the relief association for the supplemental benefits it pays. Since the relief association will likely no longer be in existence when the reimbursement is paid, proposed legislation would permit the municipality to retain the reimbursement instead of transferring it to the relief association as required under current law. The municipality would be required to use the reimbursement to make payments permitted under Minnesota Statutes, Section 424A.08.

LCPR staff will consult with the Department of Revenue to ensure that it can reimburse the municipality for payments of supplemental benefits to firefighters who are not yet age 50.

**Pre-termination
notice**

6. Current statutes require notice to the Commissioner of Revenue, State Auditor, and the Secretary of State within 30 days after the dissolution of a relief association. Members of the work group who reviewed and commented on drafts of this report noted that it would be more helpful for this notice to be given at least 30 days prior to the wind-down of the relief association and termination of the plan. In preparing legislation amending the statutory procedures, LCPR staff will consult with these agencies to determine when notice would be most helpful and what information should be included in the notice.

Applicable state law — 424B.20, Subdivision 4, Paragraph (b)

Minnesota Statutes, Section 424B.20, Subdivision 4, Paragraph (b), requires that, after the municipality pays out all pension benefits according to the schedule, “any remaining assets in the trust fund cancel to the general fund of the municipality.”

Disposition of surplus assets

The work group considered the alternatives for distributing any remaining surplus, after taking into account full vesting and any increase in the benefit level. Alternatives included retaining current law, which would transfer the surplus to the municipality, distributing the surplus among the firefighters, and variations that would split the surplus between the municipality and the firefighters.

The work group settled on a compromise to include in proposed legislation: If, even after full vesting and an increase in the benefit level to \$12,500, there is still a surplus, the relief association will be required to transfer the surplus to the municipality, but only up to an amount that is equal to the sum of all required contributions made by the municipality to the relief association plan over the preceding 10 years (without any interest or earnings). Proposed legislation would require that the municipality use the surplus to make any of the payments authorized by Minnesota Statutes, Section 424A.08. Such payments include:

- Contributions to PERA Police and Fire Plan for firefighters;
- Payments to purchase and maintain fire equipment; and
- Payments to construct, acquire, repair, or maintain fire department buildings.

If the municipality did not make any required contributions during the preceding 10 years or, after the relief association transferred to the municipality surplus equal to the last ten years of required contributions, there is still surplus remaining, proposed legislation will require the relief association and the municipality to arrive at an agreement as to how to split the remaining surplus.

If the relief association and the municipality cannot reach agreement within 6 months of the plan termination date regarding how to split the surplus, the surplus must be

paid to the firefighters. The surplus is to be split among the firefighters according to the criteria established by the board of trustees, either based on years of service or in equal share to each firefighter. The board will need to decide which firefighters will share in the allocation: only active firefighters, or will inactive and recent retirees, as defined by the board, also share in the surplus.

Missing firefighters

Work group members noted that current statutes do not address how to deal with the benefits of firefighters who cannot be found or who do not respond to attempts to contact them. Proposed legislation will need to include the disposition of these benefits for “missing” firefighters.

Options to be investigated by LCPR staff include requiring the benefit to be transferred to the State under state escheat laws or to an IRA at a financial institution, in the name of the firefighter.

Repeal 2018 legislation on surplus

Work group members agreed that the law enacted in 2018 that applies to Plymouth and three other relief associations and that requires any surplus upon dissolution or termination of the relief association to go to the State’s general fund should be repealed. (The law is Minnesota Statutes, Section 424B.20, Subdivision 4a.)

Conclusion

The work group, consisting of firefighters, fire chiefs, municipal officials, and representatives from the League of Minnesota Cities and the State Auditor, met during the interim between the 2018 and 2019 legislative sessions and accomplished the tasks required by the 2018 Omnibus Pension and Retirement Act. In summary, the work group reached the following conclusions and made the following recommendations regarding legislation:

- *Data on prevalence of surplus assets.* The work group reviewed the data regarding relief association defined benefit pension plans that have assets in excess of