

## Fire State Aid and the PERA Statewide Volunteer Firefighter Plan: Proposal for Sharing Aid with Participating Municipalities

To: Doug Anderson, Chair, PERA Statewide Volunteer Firefighter Plan Advisory Board

From: Susan Lenczewski, Executive Director  
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Date: September 2, 2020

Attachment: PERA SVF Combination Fire Departments: Identifying affiliated relief associations and firefighting corporations and active/inactive filing status with the Secretary of State

**Note on this September 2, 2020, version of this Staff Memo:** The version of this memo and the attached chart originally submitted to PERA for use with the Advisory Board at its next meeting was dated August 11, 2020. Since then, we heard from a member of the work group and the Office of the State Auditor and have done additional research, resulting in revisions to the memo. Revisions include changes to the data regarding combination fire departments and the addition of a new section at the end titled "*Additional changes for consideration by the Advisory Board.*"

### Introduction

During June and July, the staff of the Legislative Commission on Pensions and Retirement (LCPR) held two meetings of an informal work group made up of firefighters and representatives of fire departments, municipalities, the Public Employees Retirement Association (PERA), the Department of Revenue, and the Office of the State Auditor. The group discussed alternative approaches for sharing fire state aid when a municipality employs both volunteer firefighters and salaried (or "career") firefighters (called a "combination fire department"). Under current law, if a municipality with a combination fire department participates in the PERA Statewide Volunteer Firefighter Plan (SVF Plan) to provide retirement benefits for its volunteer firefighters, the fire state aid distributed annually by the Minnesota Department of Revenue is permitted to be paid only to the SVF Plan for the municipality's volunteer firefighters.

The omnibus pension and retirement bill enacted in 2020 added a new section to Minnesota Statutes, Section 477B.042, which provides for the sharing of fire state aid between a municipality and its affiliated volunteer firefighter relief association when the municipality has a combination fire department. Under new Section 477B.042, a relief association and its affiliated municipality may enter into an aid allocation agreement, which must be filed with the Office of the State Auditor (OSA) to take effect. The agreement must be signed by representatives of the municipality and the relief association and must specify the amount or percentage of fire state aid to be paid to the relief association, with the remainder retained by the municipality, and the time period that the agreement is in effect. The new law does not address sharing of fire state aid between a municipality and the SVF Plan.

Important restrictions apply to the sharing of fire state aid between a municipality and its affiliated relief association under the 2020 law:

- The municipality may only use the fire state aid it receives under the agreement to fund employer contributions to the PERA Police and Fire Plan (PERA P&F).
- Supplemental state aid under Minnesota Statutes, Section 423A.022, cannot be shared. The law continues to require the municipality to transfer all supplemental aid to the relief association.

### **Proposal**

LCPR staff have prepared the following proposal based on the discussion and comments during the work group meetings on June 18, 2020, and July 7, 2020, and on emails and other communications from work group members. LCPR staff also met separately with Executive Director Doug Anderson and Policy Coordinator Amy Strenge of PERA, which administers the SVF Plan, and their suggestions are incorporated.

In summary, the proposal is that new law be enacted which would permit municipalities that participate in the SVF Plan to receive a portion of the annual fire state aid payment, up to a maximum amount that will be defined in the new law. The decision to receive a portion of fire state aid can be made unilaterally by the municipality unless the volunteer firefighters have a relief association. If the volunteer firefighters have a relief association, the legislation will require the municipality to obtain the consent of the volunteer firefighters, either through a vote of the firefighters conducted by the relief association or by entering into an aid allocation agreement negotiated with the relief association's board of trustees. Volunteer firefighters may have a relief association, even though the relief does not provide retirement benefits, for other purposes, such as fundraising and social activities.

The underlying premise is that if the volunteer firefighters have established and maintain a relief association, they have an organizational structure through which they can act. If there is no relief association, the municipality may make the decision to receive a portion of fire state aid, without regard to the wishes of the volunteer firefighters.

### **Background information on state requirements for nonprofit corporations and data on combination fire departments.**

Relief associations are nonprofit corporations established under Minnesota Statutes, Section 317A, that typically provide retirement benefits to their members through the use of a "special fund." For volunteer firefighters in the SVF Plan, there is no need for the relief association to provide retirement benefits, but they may want to maintain a relief association for other activities, such as fundraising and community activities. Funds held for purposes other than to provide retirement benefits are held in a "general fund."

Under Minnesota Statutes, Chapter 317A, a nonprofit corporation must have a board of directors (who may be called "trustees"), which satisfies a number of general requirements, including regarding the number of directors, their qualifications and term of office, the need to conduct regular meetings, and follow certain procedures for director resignation or removal. Directors are required by law to act in good faith and in the best interests of the corporation. They are subject to conflict of interest

requirements. The requirements for the most part give wide latitude to the nonprofit to establish its own rules in articles or bylaws. We are not aware of any requirements in Chapter 317A that apply specifically to nonprofits that are relief associations or independent nonprofit firefighting corporations.

In addition, all nonprofits are required to file a renewal annually with the Minnesota Secretary of State to retain “active/in good standing” status. Failure to file results in involuntary dissolution. Please see the last pages of this memo for more explanation and an analysis of the effect and cure of involuntary (or “administrative”) dissolution, in the “Additional Considerations” section.

**Data on Combination Fire Departments in the SVF Plan**

As of September 2, 2020, 18 participating employers in the SVF Plan have combination fire departments (i.e., the fire department employs both volunteer firefighters and at least one career or salaried firefighter).

Of these 18 fire departments:

- 11 have affiliated relief associations that are active and in good standing with the Secretary of State.
- 4 have affiliated relief associations that are no longer active and were involuntarily dissolved within the last 5 years.
- 3 have no affiliated relief association.
- 2 are independent nonprofit firefighting corporations and one of these is also affiliated with a relief association.

Specifics regarding the 18 combination fire departments are set forth in the attached chart titled *"PERA SVF Combination Fire Departments: Identifying affiliated relief associations and firefighting corporations and active/inactive filing status with the Secretary of State."*

**Requirements for sharing fire state aid between a municipality and the SVF Plan.**

Under the proposed legislation, the following requirements would apply in all cases where fire state aid is to be split between a municipality and the SVF Plan, regardless of whether a municipality’s volunteer firefighters have a relief association.

1. Combination fire department. The fire department must employ, by the time the fire state aid will be paid to PERA for the SVF Plan, at least one salaried or “career” firefighter who is a member of PERA P&F.
2. 110% funded status. The fire department’s account in the SVF Plan must be at least 110% funded as of the end of the most recent calendar year, taking into account the impact of any benefit increase approved by the municipality as part of the decision to split fire state aid. If any proposal that receives a favorable vote or any aid allocation agreement is intended to apply to more than

one year's fire state aid, such favorable vote or agreement becomes null and void if the funded status of the relief association drops below 110% as of the most recent calendar year-end.

3. Supplemental aid. Only fire state aid may be allocated. A municipality has no authority to receive any portion of the supplemental state aid, which must always be paid to the SVF Plan, as under current law.
4. Maximum amount available. If a municipality elects to receive a portion of the fire state aid, PERA will calculate the amount available. The maximum available is equal to whichever of the following produces the smallest amount:
  - the municipality's total employer contribution to the PERA P&F Plan for active firefighters during the previous calendar year;
  - the amount of the fire state aid not including supplemental state aid to be paid on October 1; or
  - the total state aid (fire and supplemental) minus the municipality's required financial contribution to the SVF Plan for the upcoming calendar, which is determined by PERA in August each year.
5. *Use of fire state aid.* The municipality may use the fire state aid it receives only as a reimbursement of its employer contributions to the PERA P&F Plan on behalf of its career firefighters during the previous calendar year.
6. *Payment from PERA.* PERA is required to transmit the allocated fire state aid to the municipality within 30 days of receiving the fire state aid from the Department of Revenue.

### **Firefighters have a relief association.**

If a municipality's volunteer firefighters have a relief association, the legislation will permit the municipality to receive a portion of fire state aid only if the municipality obtains the consent of the relief association either through a vote of the firefighters (Method 1) or by agreement (Method 2):

- Method 1 - by vote: The relief association puts the municipality's allocation proposal to a vote of the firefighters, and a majority votes in favor of the proposal; or
- Method 2 - by agreement: The relief association and the municipality negotiate an aid allocation agreement that satisfies the requirements of Minnesota Statutes, Section 477B.042, enacted at the end of the 2020 legislative session. Section 477B.042 currently applies only to volunteer firefighter relief associations that administer retirement benefits for volunteer firefighters, so the legislation would refer to the requirements applicable to an aid allocation agreement under Section 477B.042.

The relief association, acting through its board of trustees, has the sole authority to determine whether it will conduct a vote or negotiate an agreement.

### Method 1: Relief Association Conducts a Vote.

1. *Municipality's decision to allocate fire state aid.* The municipality determines the amount of fire state aid it wants to receive, up to the maximum determined by PERA each year (see requirement #4, above). The municipality must also determine the number of years that fire state aid will be allocated. The maximum number of years is three years.
2. *Eligibility to vote.* All active firefighters covered by the SVF Plan are eligible to vote. The relief association determines which firefighters meet the definition of "active" firefighters, based on the relief association bylaws. Members of the relief association who are not active firefighters covered by the SVF Plan are not permitted to vote.
3. *Voting procedure.* Voting process requirements:
  - The municipality's proposal is considered approved only if more than one-half of the firefighters eligible to vote in favor of the proposal.
  - The vote must be conducted by the relief association according to the voting process set forth in the relief association's bylaws.
4. *Incentives permitted.* The municipality may provide incentives to the firefighters to vote in favor of the aid allocation proposal. Incentives must be provided on a uniform basis to all active firefighters. Acceptable incentives include, but are not limited to, an increase in the per-hour or per-call pay or an increase in the benefit level under the SVF Plan.
5. *Coercion and retaliation prohibited.* A firefighter may not be coerced into voting or voting a certain way; a firefighter may not be retaliated against for not voting or for voting against the proposal.
6. *Certification.* The municipality must certify to PERA before October 1 that a vote was conducted by the relief association, that it satisfied the statutory and bylaw requirements, and that a majority of the firefighters voted to approve the proposed allocation of fire state aid. The certification would include sufficient information for PERA to determine the amount of fire state aid to be paid to the municipality.

### Method 2: Aid Allocation Agreement.

1. *Requirements.* An aid allocation agreement would be negotiated by the board of trustees of the relief association and the municipality. The agreement would be required to comply with the requirements applicable to an aid allocation agreement under Minnesota Statutes, Section 477B.042. The agreement must be written and contain the following:
  - The percentage of fire state aid, a dollar amount, or a formula to determine the amount of fire state aid that will be transmitted from PERA to the municipality annually. The amount to be transmitted to the municipality may not exceed the maximum amount calculated by PERA (see requirement #4, above).
  - The period of time covered by the agreement and the date on which the agreement expires.

2. *Standard of care.* The representatives of a relief association negotiating with the municipality are fiduciaries as described in Minnesota Statutes, Chapter 356A, for the purposes of the negotiation and entering into the agreement.
3. *Other requirements.* The agreement must be signed by the president of the relief association and an authorized official of the municipality.
4. *Filing.* The municipality must file the aid allocation agreement with PERA before October 1.

### **Firefighters do not have a relief association.**

If a municipality's firefighters do not have a relief association, the municipality may unilaterally elect to receive a portion of the annual fire state aid payment. The volunteer firefighters do not have a say in this decision.

1. *Calculation of maximum amount.* At the request of the municipality, PERA will determine and communicate to the municipality the maximum amount available (see requirement #4, above).
2. *Annual election.* The municipality will determine the amount of fire state aid it is to receive, up to the maximum determined by PERA. The municipality's election and amount to be received is made annually and must be delivered to the PERA executive director before October 1.

A municipality's firefighters may form a relief association if they wish to have a say regarding future sharing of fire state aid between the SVF Plan and the municipality. The Office of the State Auditor (OSA) provided this overview of the process and governing law for establishing or continuing a relief association:

*We recommend that firefighters who wish to form a relief association consult with an attorney who has experience working with nonprofit corporations. The firefighters would be required to draft articles of incorporation and register as a nonprofit corporation with the Minnesota Office of the Secretary of State. An annual filing with the Secretary of State is required to maintain the relief association's nonprofit status.*

*The firefighters would also seek a tax exemption from the IRS and file the applicable paperwork and annual reporting forms. Bylaws would need to be drafted, and an annual registration with the Attorney General's Office may be required. There may be additional registration or annual filing requirements with other entities, such as the Gambling Control Board, that depend on the relief association's specific activities.*

*Minnesota Statutes, Section 353G.06, Subdivision 2, permits a relief association's membership to retain the relief association as a fraternal organization after the benefit coverage change to the SVF Plan, if certain changes are made.*

### **Additional new reporting requirements.**

In addition to the requirements that a municipality file a voting certification, an aid allocation agreement, or a fire state aid election, as described above, the new law will include the following new reporting requirements:

1. *Annual reporting by PERA to the OSA.* The new law would also require PERA to report annually to the OSA a list of the fire state aid amounts that PERA pays to municipalities pursuant to a proposal that receives a favorable vote of the relief association or pursuant to an aid allocation agreement. The OSA has requested this reporting to provide the OSA with a helpful comparison tool to use when the OSA staff see the revenue reported on the municipality's financial reporting forms. PERA must file the annual list with the OSA no later than each November 30.
2. *Relief association reporting to PERA, upon request by PERA.* The new law would also require that any relief association established after the date on which the municipality and its volunteer firefighters join the SVF Plan and any relief association that continues to exist after the date on which the municipality and its volunteer firefighters join the SVF Plan report confirm to PERA that the relief association exists, if PERA requests such confirmation. Since the existence of a relief association is relevant only if the municipality wants to receive a portion of the fire state aid using the option that applies when there is no relief association in existence, PERA will be required to request such confirmation whenever a municipality requests a portion of the fire state aid under that option. The relief association will be required to provide such confirmation within 30 days of receiving the request from PERA.

### **Additional changes for consideration by the Advisory Board.**

As mentioned on page 1, after sending out this memo to the work group for final vetting and on to PERA in early August, we became aware of several concerns that had not been addressed by the work group, but could be taken up by the PERA SVF Advisory Board. LCPR staff is looking to the Advisory Board for guidance on these issues, so they can be addressed by any proposed legislation.

1. Firefighting services are provided to the City of Oakdale by the Oakdale Volunteer Fire Department, Inc., an independent nonprofit firefighting corporation, and there is no relief association affiliated with the city or the firefighting corporation. In this situation, under the proposed legislation described, the municipality would be able to receive a share of the fire state aid without any involvement by the volunteer firefighters. It has been suggested that the firefighting corporation could represent the volunteer firefighters in the same way that a relief association would.

Thus, the question is whether an independent firefighting corporation could serve the same function as a relief association with regard to conducting a vote of the volunteer firefighters or negotiating an agreement on behalf of the volunteer firefighters, if the municipality wants to receive a portion of the fire state aid.

A firefighting corporation is a nonprofit and is governed by the same Minnesota statutes applicable to relief associations. It is required to have a board of directors, who are required to act in the best interests of the corporation (*see bottom of page 2 and top of page 3 for a brief summary of these requirements*). We are not aware of any difference between a relief association board and a firefighting corporation board with regard to the ability to conduct a vote of volunteer firefighters or negotiate an agreement with a municipality.

If the Advisory Board finds this suggestion to be reasonable, we would insert "or firefighting corporation" after every reference to "relief association" in the proposed legislation. The result

would be that if a municipality has contracted with a firefighting corporation for firefighting services, the municipality will not be able to share in the fire state aid until either (a) the volunteer firefighters employed by the firefighting corporation vote in favor of the municipality's fire state aid proposal, or (b) the firefighting corporation and the municipality enter into a fire state aid allocation agreement. We would likely also need to make conforming changes to the few statutes governing firefighting corporations as necessary to permit the board to take on these additional responsibilities.

2. In considering the foregoing issue related to independent nonprofit firefighting corporations, we looked into whether it would be possible for a majority or even all of the members of the governing board of a relief association or a firefighting corporation to be individuals who are not volunteer firefighters. Since there appears to be no legal requirement that any member of the board be a volunteer firefighter, it is possible that the board of a relief association could consist entirely of career or salaried firefighters and officials or employees of the municipality, such as the chief financial officer or mayor.

(For this purpose, a firefighter who is both a salaried firefighter, employed by the municipality, and a volunteer firefighter could not be considered a "volunteer firefighter" because of the obvious conflict of interest. A firefighter who is both career and volunteer for the same municipality cannot reasonably be expected to ignore his or her full-time job in favor of his or her part-time job.)

Thus, the question is whether the board of a relief association that consists entirely of career or salaried firefighters and officials or other employees of a municipality can be expected to represent the needs and desires of the volunteer firefighters when the municipality wants a share of the fire state aid that would otherwise be paid to the SVF Plan solely for the benefit of the volunteer firefighters' retirement benefits.

We think the answer is "no" or, at least, that there is significant risk to the volunteer firefighters that the answer could be "no." While the board of a nonprofit corporation is required by law to act in the best interests of the corporation, it is possible that the interests of the corporation will not always be aligned with the interests of the volunteer firefighters. Moreover, nothing in the law requires the board to act in the best interests of the volunteer firefighters or make volunteer firefighters' retirement benefits their highest priority.

Accordingly, the proposed legislation could state that if a relief association exists and a majority of the members of its board are career or salaried firefighters and officials or employees of the municipality, the municipality may receive a share of the fire state aid only if the relief association conducts a vote of the volunteer firefighters and a majority vote in favor of the municipality's proposal. Method 2, which would allow the relief association board to negotiate an aid allocation agreement, would not be an available alternative to a relief association with a board controlled by individuals who are not volunteer firefighters. A vote is the more direct way to allow the volunteer firefighters to protect their interest and have a voice in whether any of the fire state aid is paid to the municipality. Whereas the aid allocation agreement is negotiated by the board, which may or may not be acting in the best interests of the volunteer firefighters.



If the Advisory Board finds this suggestion to be reasonable, we would insert a provision in the proposed legislation that states that if there is a relief association, but its board is controlled by individuals who are not volunteer firefighters, the relief association must conduct a vote of the volunteer firefighters regarding the proposal by the municipality to receive a portion of the fire state aid. Without this provision, it is not clear that the proposed legislation will have the intended effect of permitting volunteer firefighters to have a voice in how fire state aid is to be allocated.

3. The pension director in the Office of the State Auditor reviewed an earlier version of the chart that lists the combination fire departments. She informed us that a number of the relief associations affiliated with combination fire departments are no longer in good standing with the Minnesota Secretary of State because they have failed to file an annual report. We checked the Secretary of State's database on filings to determine exactly which relief associations are in good standing and which have been involuntarily dissolved and updated the chart to indicate this status. The chart, as updated, is attached and is now titled "*PERA SVF Combination Fire Departments: Identifying affiliated relief associations and firefighting corporations and active/inactive filing status with the Secretary of State.*"

Thus, the question is whether a relief association that has been involuntarily dissolved by the Secretary of State can effectively conduct a vote or negotiate an agreement.

We do not have a definitive answer to this question, and more research could be done. If a vote were conducted by the board of a dissolved relief association, would the board's tally as to the outcome of the vote be treated as effective corporate action? Similarly, if the board of a dissolved relief association enters into an aid allocation agreement with the municipality, would it have any ability to enforce the agreement against the municipality, such as where the municipality agreed, in exchange for fire state aid, to increase the retirement benefit level for the firefighters in the SVF Plan? We think the answer is "no" or, at least, that there is significant risk to the volunteer firefighters that the answer could be "no."

Under Minnesota Statutes, section 317A.827, a nonprofit corporation that has been administratively dissolved may be retroactively reinstated by filing an annual registration with the Secretary of State. The filing accomplishes the following:

- (a) returns the nonprofit corporation to active status as of the date of the administrative dissolution;
- (b) validates contracts or other acts that occurred during the period when the non-profit was dissolved; and
- (c) restores to the corporation all assets and rights as if it had not been dissolved.

There does not appear to be any time limit on how long reinstatement is available to a non-profit that is administratively dissolved. Administrative dissolution does not bar creditors or claimants from suing or enforcing claims or contracts against the non-profit.

If a relief association wants to enforce a right after being administratively dissolved the relief would simply need to file an annual registration. If a relief association wishes to limit a board

member's liability after being administratively dissolved, it similarly simply needs to file the registration. Finally, if the relief wishes to enforce a contract or other action made while administratively dissolved, the relief simply needs to file the registration.

In view of the ease with which a relief association can reinstate its good standing, the Advisory Board may want to consider including in the proposed legislation a requirement that, if a relief association wishes to be involved in the municipality's decision to receive fire state aid, either through a vote or negotiation of an agreement, the relief association be in good standing with the Secretary of State.

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# PERA SVF Combination Fire Departments

## Identifying affiliated relief associations and firefighting corporations and active/inactive filing status with the Secretary of State\*

Date: September 2, 2020

### Fire Departments with Relief Associations in Good Standing

Fire Department	Affiliated Relief Association and Independent Nonprofit Firefighting Corporation, if any	Status with Secretary of State
1. Cambridge Fire Department	The Cambridge Firefighters Relief Association	Active/In Good Standing
2. International Falls Fire Department	International Falls Fire Department Relief Association	Active/In Good Standing
3. Mahtomedi Fire Department	The Mahtomedi Firemen’s Relief Association ( <i>DBA: The Mahtomedi Fire Department Relief Association</i> )	Active/In Good Standing, filed intent to dissolve on 3/31/2020
4. Melrose Volunteer Fire Department	The Melrose Fire Department Relief Association	Active/In Good Standing
5. Scandia Fire/Rescue Department	The Scandia fire Fighter Relief Association	Active/In Good Standing
6. Spring Lake Park-Blaine-Moundsview Fire Department	Spring Lake Park Firefighter’s Relief Association	Relief: Active/In Good Standing
	Firefighting Corp: Spring Lake Park Fire Department Inc. ( <i>DBA: SBM Fire Department</i> )	Firefighting Corp: Active/In Good Standing
7. Tower Fire Department	Tower Firemen’s Relief Association	Active/In Good Standing
8. Vadnais Heights Fire Department	The Vadnais Heights Firefighters’ Relief Association	Active/In Good Standing
9. Victoria Fire Department	Victoria Firefighter’s Relief Association	Active/In Good Standing
10. Waconia Fire Department	Waconia Fire Relief Association	Active/In Good Standing
11. Willmar Fire Department	Willmar Firefighters Association	Active/In Good Standing

\* Firefighter relief associations and independent nonprofit firefighting corporations are nonprofit corporations under Minnesota law (*Minnesota Statutes, Chapter 317A*). All nonprofits are required to file a renewal annually with the Minnesota Secretary of State to retain “active/in good standing” status. Failure to file results in involuntary dissolution.

## **Fire Departments with Inactive Relief Associations and No Firefighting Corp.**

<u>Fire Department</u>	<u>Affiliated Relief Association</u>	<u>Status with Secretary of State</u>
12. Cottage Grove Fire Department	Cottage Grove Firefighter Relief Association	Inactive (involuntary dissolution date: 3/8/2018)
13. Isanti Area Joint Operating Fire District	Isanti Firefighter's Relief Association	Inactive (involuntary dissolution date: 2/28/2017)
14. Saint Francis Fire Department	St. Francis Firefighters Relief Association	Inactive (involuntary dissolution date: 2/19/2020)
15. White Bear Lake Fire Department	The White Bear Lake Fire Department Relief Association	Inactive (involuntary dissolution date: 2/19/2020)

## **Fire Departments with No Relief Association**

<u>Fire Department</u>	<u>Affiliated Independent Nonprofit Firefighting Corporation</u>	<u>Status with Secretary of State</u>
16. Albert Lea Fire Department	None	N/A
17. Lino Lakes Fire Department	None	N/A
18. Oakdale Fire Department	Oakdale Volunteer Fire Department, Inc.	Active/In Good Standing

## **Summary**

As of September 2, 2020, 18 participating employers in the PERA Statewide Volunteer Firefighter Plan have combination fire departments (i.e., the fire department employs both volunteer firefighters and at least one career or salaried firefighter).

Of these 18 fire departments:

- 11 have affiliated relief associations that are active and in good standing with the Secretary of State.
- 4 have affiliated relief associations that are no longer active and were involuntarily dissolved within the last 5 years.
- 3 have no affiliated relief association.
- 2 are independent nonprofit firefighting corporations and one of these is also affiliated with a relief association.