



S.F. 24
(Wiger)

H.F. 1839
(Mares)



Executive Summary of Commission Staff Materials

Affected Pension Plan(s): Volunteer Firefighter Relief Associations
Relevant Provisions of Law: Minnesota Statutes, Section 424A.02, Subdivision 1
General Nature of Proposal: Relaxes Reemployment Restriction To Qualify For A Volunteer Firefighter Relief Association Service Pension
Date of Summary: March 19, 2001

Specific Proposed Change

- Volunteer Fire Service Pension Payment With Subsequent Fire Department Reemployment. Retiring volunteer firefighters who are subsequently employed full-time by the municipal fire department would be eligible to receive a service pension.

Policy Issues Raised by the Proposed Legislation

1. Appropriateness of Simultaneous Pension and Salaries. Paying pension benefits to active employees historically has been disallowed.
2. Reversal of 2000 Legislation. The current permanent separation from fire services requirement was strengthened by the 2000 Legislation.
3. Age 50 Volunteer Firefighters Retirement Age Too Early. Age 50 may not be the normal career end for some or many firefighters.
4. Municipalities Have Difficulties Retaining Top Level Firefighters. Retention problems are the root cause for the proposed legislation.
5. More Appropriate Special Legislation. The problem for White Bear Lake may be better resolved by local legislation.
6. Proposal Overlaps Double Pension Coverage Issue. There is a broader issue of duplicate PERA-P&F and Volunteer Firefighter Relief Association pension coverage.
7. Provision Omits Nonprofit Corporations. Bill misses comparable circumstance in nonprofit firefighting corporations.
8. Other Non-Legislative Solutions Are Available. Adding deferred annuity interest to the White Bear Lake Volunteer Firefighter Relief Association benefit plan or paying the White Bear Lake fire chief higher compensation are also available solutions.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: S.F. 24 (Wiger); H.F. ____ (): Volunteer Fire; Service Pension Payment With Subsequent Fire Department Reemployment

DATE: March 15, 2001

Summary of S.F. 24 (Wiger); H.F. ____ ()

S.F. 24 (Wiger); H.F. ____ () amends Minnesota Statutes, Section 424A.02, Subdivision 1, which authorizes volunteer firefighter relief associations to pay service pensions to eligible members and prohibits the payment of service pensions to firefighters who have not separated from active fire department service, by permitting the payment of volunteer firefighter relief association service pensions to former relief association members who are subsequently employed by the municipality to perform full-time fire department duties.

Background Information On Volunteer Firefighter Relief Associations And The Regulation Of Volunteer Fire Retirement Benefits

a. Fire Service and Relief Associations

Fire coverage in Minnesota is provided through 799 firetowns. Pension coverage for paid firefighters is provided by the Public Employees Police and Fire Plan (PERA-P&F), three paid firefighter relief associations (Bloomington, Minneapolis, and Virginia), and 18 former paid firefighter consolidation accounts that were merged into PERA-P&F in 1999 (Albert Lea, Austin, Chisholm, Columbia Heights, Crookston, Duluth, Faribault, Hibbing, Mankato, Red Wing, Richfield, Rochester, St. Cloud, St. Louis Park, St. Paul, South St. Paul, West St. Paul, and Winona).

Coverage for volunteer firefighters in the state's roughly 800 firetowns is provided by approximately 700 volunteer firefighter relief associations. Although the Bloomington Firefighters Relief Association provides retirement coverage to firefighters in a volunteer fire department, the coverage is based on the salary of a salaried (police) position and is thus considered a paid firefighters relief association for statutory regulation purposes.

b. Structure of Volunteer Firefighter Pension Coverage

In Minnesota, volunteer firefighters typically have pension coverage as part of their compensation package and that pension coverage is provided by the various local volunteer firefighter relief associations located in the state. These volunteer firefighter relief associations are creatures of state law and are subject to various statutory regulations.

Under Minnesota Statutes, Section 424A.001, Subdivision 4, volunteer firefighter relief associations are required to be nonprofit corporations organized under Minnesota Statutes, Chapter 317A, the Minnesota Nonprofit Corporation Act. Minnesota Statutes, Chapter 317A, applies to all Minnesota nonprofit corporations and contains numerous requirements on the manner of incorporation, general powers, scope of bylaws, function of the board and officers, rights and obligations of members, processes of consolidation, merger, or dissolution, and corporate registration.

In several areas, Minnesota Statutes, Chapter 424A, a chapter applying specifically to volunteer fire relief associations, contains additional regulation or conflicting regulation, and the more particularized regulatory provisions of that chapter apply. For instance, Minnesota Statutes, Section 317A.203, provides for a board of directors of at least three individuals, but Minnesota Statutes, Section 424A.04, Subdivision 1, provides for a board of trustees generally comprised of nine members. Also, Minnesota Statutes, Section 317A.701 through 317A.791, generally governs the dissolution of a nonprofit corporation, but Minnesota Statutes, Section 424A.02, Subdivision 11, specifically governs the dissolution of a volunteer firefighter relief association.

A volunteer firefighter relief association under Minnesota Statutes, Chapter 424A, can exist in one of three ways:

1. Separate Corporation. As a separate nonprofit corporation directly associated with a municipal fire department established by municipal ordinance;
2. Division of Another Relief Association. As a volunteer division or account of a part paid and part volunteer firefighter relief association directly associated with a municipal fire department established by municipal ordinance; or
3. Subsidiary Corporation. As a separate nonprofit corporation subsidiary to an independent nonprofit firefighting corporation also organized under Minnesota Statutes, Chapter 317A, and operating exclusively for firefighting purposes.

A volunteer firefighter relief association, under Minnesota Statutes, Section 424A.001, Subdivision 4, has the status of a governmental entity, receiving public money, and providing benefit coverage for individuals providing the governmental services of firefighting and emergency first response.

c. Volunteer Firefighter Relief Association Structure

Minnesota Statutes, Section 424A.05, requires that every relief association establish and maintain a special fund. The special fund is the fund from which volunteer firefighter pension benefits are payable and into which state aid, municipal contributions, and other public money is deposited. Beyond fire state aid and municipal tax revenue, the special fund also must receive all money or property donated by any person if so designated. Investment income on special fund assets also must be deposited in the special fund. Beyond the payment of service pensions, the special fund can also be disbursed for disability benefits, survivor benefits, funeral benefits, Minnesota State Fire Department Association and State Volunteer Firefighters' Benefit Association dues, and authorized administrative expenses. All benefit payments are required to be in accord with the requirements of law and the relief association bylaws.

The relief association treasurer is required to be the custodian of the special fund and recipient on behalf of the special fund of its revenue. The treasurer is required to maintain records documenting any transaction affecting the assets or revenues of the special fund. The records of the treasurer, as well as the relief association bylaws, are public and open for public inspection.

The assets of the special fund must be invested in authorized securities, which are either a limited list of securities for small relief associations, or a separate codified list which represents the pre-1994 list of authorized investment securities for the State Board of Investment for larger relief associations.

Relief associations under Minnesota Statutes, Section 69.775, also have authority to invest in mutual funds that are restricted to the same authorized securities, or to invest in the Minnesota Supplemental Investment Fund administered by the State Board of Investment.

Minnesota Statutes, Section 424A.06, allows a volunteer firefighter relief association to establish and maintain a general fund. The general fund is the fund into which non-tax or non-public funds are deposited and from which moneys can be expended as the relief association sees fit, as governed by its bylaws. The general fund traditionally is supported by member dues and by revenues raised from community fundraising events.

Discussion

S.F. 24 (Wiger); H.F. ____ () would create an exception to the general rule for volunteer firefighter relief associations that a firefighter must discontinue both relief association membership and fire department service in order to be eligible to receive a service pension by permitting the payment of a volunteer firefighter relief association service pension to a person who is employed full-time by the applicable municipality to perform firefighting services. The proposed legislation arises out of the situation of the White Bear Lake Volunteer Firefighter Relief Association, where the city of White Bear Lake desires to retain the employment services of its current fire chief and perhaps other current personnel after those volunteer firefighter relief association members turn age 50 and are eligible to receive a service pension.

The proposed pension legislation raises several pension and related public policy issues for potential consideration by the Legislative Commission on Pensions and Retirement, including the following:

1. Appropriateness of Paying Pensions to Active Employees. The policy issue is the appropriateness of providing a service pension to a volunteer firefighter who is employed or reemployed as a full-time fire department employee by the applicable city. All Minnesota public pension plans require the termination of active employment as a prerequisite for the receipt of an age and service retirement annuity or benefit. This reflects a longstanding Commission and legislative policy that the purpose of pension plan coverage is to replace employment as a major factor of financial support when public employees reach the conclusion of their normal working careers and retire. Thus, Minnesota public pension coverage includes employment termination as a prerequisite for the receipt of a retirement benefit and typically utilizes reemployed annuitant earnings limitations in the event that a public employee subsequently returns to the same or comparable public employment. If this change for volunteer firefighters is recommended by the Commission and enacted by the Legislature, it will become precedent for a relaxation of the employment termination requirement for benefit receipt in other pension plans.

2. Reversal of 2000 Session Volunteer Fire Relief Association Amendments. The policy issue is the appropriateness of the proposed legislation as a reversal of legislation recommended by the Commission and enacted by the 2000 Legislature that bolster the requirement that a firefighter must terminate fire department employment to become eligible for a service pension from a volunteer firefighter relief association. In Laws 2000, Chapter 461, Article 15, Sections 4 and 8, the employment termination requirement was strengthened, with the definition of the term "separate from active service" amended to emphasize that the employment termination be permanent and with the addition of a requirement that any service pension be repaid if a retired volunteer firefighter resumes active fire department service. The 2000 Session volunteer fire relief association amendments represented the requests and recommendations of the Minnesota Area Relief Association Coalition (MARAC), the Minnesota State Fire Department Association, and the Minnesota State Fire Chiefs Association.

3. Continued Appropriateness of Age 50 Volunteer Firefighter Relief Association Normal Retirement Ages. The policy issue is the continued appropriateness of the current age 50 normal retirement age requirement for volunteer firefighters. Although volunteer firefighter relief associations are permitted under Minnesota Statutes, Section 424A.02, Subdivision 1, Paragraph (a) to set their normal retirement age at any age that suits their purposes, with an age 50 minimum retirement age, most volunteer firefighter relief associations utilize the age 50 normal retirement age. The Commission's Principles of Pension Policy (II.C.4) indicate that

[t]he normal retirement age should be set in a reasonable relationship to the employability limits of the average public employee and should differentiate between regular public employees and protective and public safety employees.

If the proposed legislation is indicative of a trend for volunteer firefighters to continue in their fire employment beyond age 50, that experience would challenge age 50 as a good measure of the normal working career of volunteer firefighters.

4. Appropriate Rule For The Volunteer Firefighter Relief Association In Recruiting And Retaining Public Employees. The policy issue is determining the appropriate role for a volunteer firefighter relief association in balancing its intended assistance in recruiting new employees and retaining existing employees with its intended assistance in encouraging the predictable systematic outtransitioning of employees at the conclusion of their usually expected working career. In this case, White Bear Lake desires to retain the employment services of its fire chief after he reaches age 50, when the White Bear Lake Volunteer Firefighter Relief Association is encouraging his outtransitioning by providing a sizable service pension first payable at age 50. The proposed legislation attempts to find this balance by exempting the fire chief and related personnel from the termination of active service requirement for a volunteer firefighter relief association service pension.

5. Appropriateness As General Legislation or As Special Legislation. The policy issue is the appropriateness of the solution to the White Bear Lake fire chief problem as general legislation or special legislation. While any exception, in general law or in special law, will raise significant pension issues and will threaten to be a precedent for other broader extensions, a general law exception runs the risk of creating potential solutions to be utilized both by localities with the problem and by localities without the problem, where mischief could occur. If the Commission wishes to minimize the potential for unintended mischief in connection with this proposed

exception, Amendment LCPR01-88 would recraft the provision as special legislation.

6. Double Pension Coverage Issues. The policy issue is the problem of double pension coverage for some volunteer firefighters by both the Public Employees Police and Fire Plan (PERA-P&F) or the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and the volunteer firefighter relief association, which potentially is the circumstance of the White Bear Lake fire chief and which may be the situation of other volunteer firefighters affected by the proposed legislation. In 1989, the Legislature attempted to address the issue of double coverage for volunteer firefighters who were also part-time or full-time municipal fire department employees by enacting Minnesota Statutes, Section 353.01, Subdivision 36, and Section 353.87.

Subd. 33. **Basic member.** "Basic member" means any public employee, including any public hospital employee, not covered by any agreement or modification made between the state and the Secretary of Health, Education and Welfare.

353.87 Volunteer firefighters; participation; limitation; and refund.

Subdivision 1. **Participation.** Except as provided in subdivision 2, a volunteer firefighter, as defined in section 353.01, subdivision 36, who, on June 30, 1989, was a member of, and a participant in, the public employees retirement fund or the public employees police and fire fund and was making contributions to either of those funds based, at least in part, on compensation for services performed as a volunteer firefighter shall continue as a member of, and a participant in, the public employees retirement fund or the public employees police and fire fund and compensation for services performed as a volunteer firefighter shall be considered salary.

Subd. 2. **Option.** A volunteer firefighter to whom subdivision 1 applies has the option to terminate membership and future participation in the public employees retirement fund or the public employees police and fire fund upon filing of a written notice of intention to terminate participation. Notice must be given on a form prescribed by the executive director of the association and must be filed in the offices of the association not later than June 30, 1990.

Subd. 3. **Limitation.** No volunteer firefighter to whom subdivision 1 applies or the governmental employer of the volunteer firefighter is required to make back contributions to the public employees retirement association for volunteer firefighter services rendered before July 1, 1989, notwithstanding the provisions of section 353.27, subdivision 12.

Subd. 4. **Refund.** Upon timely filing of a valid notice of termination of participation in accordance with subdivision 2, a volunteer firefighter to whom subdivision 1 applies must be given a refund of all past employee contributions made on account of volunteer firefighter service with five percent interest compounded annually.

The apparent intent of the Legislature in the 1989 enactment was to eliminate the practice whereby part-time or full-time firefighters could obtain both PERA-P&F/PERA-General pension coverage and volunteer firefighter relief association coverage for the same service. In recent litigation involving the Office of the State Auditor and the Hastings Fire Department Relief Association, Judge Louise Dovre Bjorkman of the Second Judicial District Court restored the Hastings Fire Department Relief Association coverage for five full-time Hastings firefighters who were required to respond to emergency situations as part of their employment duties. For the Commission and the Legislature to consider the appropriateness of the proposed relaxation in the employment termination requirement for a volunteer firefighter relief association service pension on behalf of former volunteer firefighter relief association members who intend to retain their full-time municipal fire department employment positions, the extent of the current pension coverage of these employees and the potential for any inappropriate double pension coverage should be explored.

7. Unclear Application To Nonprofit Firefighting Corporations. The policy issue is the lack of clarity in the proposed legislation as it would apply to volunteer firefighter relief associations which are associated with independent nonprofit firefighting corporations. Of the roughly 700 volunteer firefighter relief associations existing in Minnesota, 64 are reported by the Office of the State Auditor as being affiliated with independent nonprofit firefighting corporations. These independent nonprofit firefighting corporations are fire departments that are established as nonprofit corporations and provide fire suppression and related services to cities or townships under contract, rather than as a direct municipal service. The independent nonprofit firefighting corporations appear to function as joint powers entities under arrangements that predate joint

powers legislation. The proposed legislation only contemplates municipal fire departments. If the Commission desires to similarly accommodate independent nonprofit firefighting corporations, Amendment LCPR01-89 would include independent nonprofit firefighting corporations in the proposed legislation.

8. Appropriateness In Light of Other Alternative Non-Legislative Solutions. The policy issue is the appropriateness of the proposed legislation in light of other non-legislative solutions that are available to the city of White Bear Lake and the White Bear Lake Volunteer Firefighter Relief Association. The White Bear Lake Volunteer Firefighter Relief Association currently does not provide any interest on deferred service pensions as is permitted under Minnesota Statutes, Section 424A.03, Subdivision 7, which means that any firefighter who terminates volunteer firefighter relief association membership and does not draw a volunteer firefighter relief association service pension at the first opportunity, age 50, will be adversely affected economically. Since this potential benefit loss may be driving the proposed legislation, an amendment to the bylaws of the White Bear Lake Volunteer Firefighter Relief Association, with city approval, could resolve the White Bear Lake problem. Additionally, the city of White Bear Lake could provide other financial incentives to its fire chief or other personnel identified for retention beyond age 50 that would induce them to delay receipt of their volunteer firefighter relief association service pensions.

1 M moves to amend S.F. No. 34; H.F. No.
2 _____, as follows:

3 Delete everything after the enacting clause and insert:

4 "Section 1. [WHITE BEAR LAKE VOLUNTEER FIREFIGHTER RELIEF
5 ASSOCIATION; QUALIFICATION FOR SERVICE PENSION IN CERTAIN
6 INSTANCES.]

7 Notwithstanding any provision to the contrary of Minnesota
8 Statutes, section 424A.001, subdivision 9; or 424A.02,
9 subdivision 1, paragraph (d), or subdivision 9b, a member of the
10 White Bear Lake volunteer firefighter relief association who has
11 terminated active membership in the relief association and has
12 otherwise qualified for a service pension is entitled to receive
13 a service pension from the relief association despite subsequent
14 employment of the person by the city of White Bear Lake to
15 perform duties within the municipal fire department on a
16 full-time basis.

17 Sec. 2. [EFFECTIVE DATE.]

18 Section 1 is effective on the day after the city council of
19 the city of White Bear Lake and its chief clerical officer
20 timely complete their compliance with Minnesota Statutes,
21 section 645.021, subdivisions 2 and 3."

22 Amend the title by deleting it in its entirety and
23 inserting:

24 "A bill for an act

1 relating to retirement; city of White Bear Lake and
2 the White Bear Lake volunteer firefighter relief
3 association; allowing the relief association to pay
4 service pensions to former members who are full-time
5 employees of the fire department."

1 M moves to amend S.F. No. 24; H.F. No.
2 _____, as follows:

3 Page 2, line 29, after "municipality" insert "or
4 independent nonprofit firefighting corporation, whichever
5 applies,"

6 Page 2, line 30, after "the" insert "municipal" and after
7 "department" insert "or corporation"

Senator Wiger introduced--

S.F. No. 24: Referred to the Committee on State and Local Government Operations.

1 A bill for an act

2 relating to retirement; volunteer firefighters;
3 allowing relief associations to pay service pensions
4 to former members who are full-time employees of the
5 fire department; amending Minnesota Statutes 2000,
6 section 424A.02, subdivision 1.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

8 Section 1. Minnesota Statutes 2000, section 424A.02,
9 subdivision 1, is amended to read:

10 Subdivision 1. [AUTHORIZATION.] (a) A relief association,
11 when its articles of incorporation or bylaws so provide, may pay
12 out of the assets of its special fund a service pension to each
13 of its members who: (1) separates from active service with the
14 fire department; (2) reaches age 50; (3) completes at least five
15 years of active service as an active member of the municipal
16 fire department to which the relief association is associated;
17 (4) completes at least five years of active membership with the
18 relief association before separation from active service; and
19 (5) complies with any additional conditions as to age, service,
20 and membership that are prescribed by the bylaws of the relief
21 association. A service pension computed under this section may
22 be prorated monthly for fractional years of service, if the
23 bylaws or articles of incorporation of the relief association so
24 provide. The service pension may be paid whether or not the
25 municipality or nonprofit firefighting corporation to which the
26 relief association is associated qualifies for fire state aid

1 under chapter 69.

2 (b) In the case of a member who has completed at least five
3 years of active service as an active member of the fire
4 department to which the relief association is associated on the
5 date that the relief association is established and
6 incorporated, the requirement that the member complete at least
7 five years of active membership with the relief association
8 before separation from active service may be waived by the board
9 of trustees of the relief association if the member completes at
10 least five years of inactive membership with the relief
11 association before the payment of the service pension. During
12 the period of inactive membership, the member is not entitled to
13 receive disability benefit coverage, is not entitled to receive
14 additional service credit towards computation of a service
15 pension, and is considered to have the status of a person
16 entitled to a deferred service pension under subdivision 7.

17 (c) No municipality or nonprofit firefighting corporation
18 may delegate the power to take final action in setting a service
19 pension or ancillary benefit amount or level to the board of
20 trustees of the relief association or to approve in advance a
21 service pension or ancillary benefit amount or level equal to
22 the maximum amount or level that this chapter would allow rather
23 than a specific dollar amount or level.

24 (d) No relief association as defined in section 424A.001,
25 subdivision 4, may pay a service pension or disability benefit
26 to a former member of the relief association if that person has
27 not separated from active service with the fire department to
28 which the relief association is directly associated, unless that
29 person is employed by the municipality to perform duties within
30 the fire department on a full-time basis.

31 Sec. 2. [EFFECTIVE DATE.]

32 Section 1 is effective the day following final enactment.