

**S.F. 1231**

(Betzold)

**H.F. 1295**

(Haas)



### **Executive Summary of Commission Staff Materials**

<u>Affected Pension Plan(s):</u>	Volunteer Firefighter Relief Associations
<u>Relevant Provisions of Law:</u>	Minnesota Statutes, Section 424A.04, new subdivision added
<u>General Nature of Proposal:</u>	Administration of Volunteer Firefighter Relief Associations
<u>Date of Summary:</u>	March 5, 2001

### **Specific Proposed Change(s)**


- Requires Bonding or Insurance by Volunteer Firefighter Relief Association Consultants. Financial consultants of volunteer firefighter relief associations would be required to be bonded or to provide evidence of relevant insurance.
- Defines Financial Consultants of Volunteer Firefighter Relief Associations. Defines volunteer firefighter relief association financial consultants to include actuaries, accountants, attorneys, investment managers and advisors, and benefit plan consultants.

### **Policy Issues Raised by the Proposed Legislation**

1. Connection to S.F. 358 (Betzold); H.F. 557 (Haas). The proposed volunteer firefighter relief association consultant bonding/insurance requirement would eliminate or reduce future potential requests for State appropriations, like the City of Osseo request.
2. Workability, Monitoring, and Enforcement. Because of the distance from day-to-day volunteer firefighter relief association affairs, regulation by the State Auditor is limited and the proposed regulation really will depend on local municipal vigilance.
3. Displacement of Self-Help Remedy. Because local municipal vigilance would result in better consultant selection, monitoring, and remedies, the proposed legislation will likely displace self-help remedies and be criticized as volunteer firefighter relief association micromanagement.
4. Likely Increase in Consultant Expense. This proposed bonding/insurance requirement may reduce the consultant pool and increase consultant expense.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director 

RE: S.F. \_\_\_\_ (Betzold); H.F. 1295 (Haas): Volunteer Fire Relief Associations; Bonding or Insurance Conditions for Consultants

DATE: March 1, 2001

Summary of S.F. (Betzold); H.F.1295 (Haas)

S.F. \_\_\_\_ (Betzold); H.F. 1295 (Haas) amends Minnesota Statutes, Section 424A.04, relating to volunteer firefighter relief association boards of trustees, by adding a subdivision which requires various professional or financial consultants of a volunteer firefighter relief association to post a bond or to provide evidence of errors and omissions or professional liability insurance with the municipality associated with the volunteer firefighter relief association before commencing any consulting duties. The requirement applies to actuaries, accountants, consultants, attorneys, investment advisors, benefit design consultants, and other financial consultants who may provide services to volunteer firefighter relief associations.

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 in 1998 was provided by the Public Employees Police and Fire Plan (PERA-P&F), three paid firefighter relief associations (Bloomington, Minneapolis, and Virginia), and 18 paid firefighter consolidation accounts administered by the Public Employees Retirement Association (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. \_\_\_\_ (Betzold); H.F. 1295 (Haas) implements a preventive measure arising out of the recent Osseo Volunteer Firefighter Relief Association benefit plan conversion problem by making the posting of a bond or the provision of evidence of insurance a condition for a financial consultant to conduct business with a volunteer firefighter relief association, with the bond or insurance evidence required to be filed with the applicable municipality.

The proposed legislation raises several pension and related public policy issues, as follows:

1. Extent of Assistance Provided to Osseo Appropriation Legislation. The policy issue is the extent of assistance that the proposed legislation would provide to the State appropriation request from the City of Osseo arising out of problems it experienced in converting the Osseo Volunteer Firefighter Relief Association benefit plan. While the Osseo Volunteer Firefighter Relief Association benefit plan conversion was a significant financial problem for the City of Osseo, a policy issue arising out of its

State appropriation request is the precedent it would set for similar demands by other cities and volunteer firefighter relief associations in the future. The proposed legislation would serve to curb or eliminate future potential demands by other municipalities by eliminating some or all of the “fly-by-night” potential consultants from the volunteer firefighter relief association arena and by providing accessible financial resources if a mistake or misdeed occurs before a city or a volunteer firefighter relief association would need to resort to State assistance.

2. Workability, Adequacy of Monitoring, and Enforcement. The policy issue is whether the provision is workable or not, whether the monitoring of the operation of the provision will be adequate or not, and whether the provision will be diligently enforced or not. If the volunteer firefighter relief association and the associated municipality are diligent, the proposed legislation will be workable, but if both are diligent in their operating practices, the posting of bonds or the provision of insurance would occur without a legislation mandate. For a volunteer firefighter relief association that does business on the fly and for a municipality that does not ensure that its officials (mayor, finance director/clerk, and fire chief) participate on the board, the bond posting and the insurance evidence provision is unlikely to occur, even if mandated by statute. Any monitoring of compliance with this new proposed requirement would have to be done by the municipality locally and by the Office of the State Auditor statewide. The Office of the State Auditor monitoring would likely be done on the basis of the annual financial and related reporting by the volunteer firefighter relief association, which is delayed monitoring, probably incomplete, and subject to misreporting or falsification by the volunteer firefighter relief associations. The proposed legislation currently includes no specific provision for enforcement by the municipality or by the Office of the State Auditor.
3. The Appropriateness of Displacing An Available Self Help Remedy. The policy issue is the appropriateness of the Legislature attempting to remedy a problem where the locality and its volunteer firefighter relief association, if responsible, have an available self help remedy. Although potentially unfortunate, the financial consequences for a volunteer firefighter relief association and a municipality of a failure to select competent financial and related consultants and to rely on a consultant’s advice without attempting to validate it independently serves as a corrective measure for that volunteer firefighter relief association and the municipality involved and serves as an example to all other volunteer firefighter relief association’s and municipalities to undertake their financial duties with great care. Many volunteer firefighter relief association administrators and municipal officials currently complain about the amount of state regulation that they face and contend that the State Legislature already micromanages volunteer firefighter relief association affairs. These individuals likely will view this proposed legislation in the same light.
4. Potential For Increased Volunteer Firefighter Relief Association Administrative Expense Resulting From Additional Consultant Expenses. The policy issue is the potential for volunteer firefighter relief associations to experience increased administrative expense as a result of additional financial consultant expense caused by the bonding and insurance requirements of the proposed legislation. Increased volunteer firefighter relief association administrative expenses become part of the annual financial requirements of the relief association and drive, in part, municipal contributions to the plan. If volunteer firefighter relief association financial consultants currently are bonded or have insurance as part of their normal business requirements, the proposed legislation will not cause any real increased volunteer firefighter relief association expense, although consultants could use this legislation as an opportunity to increase their fees. If financial consultants are not routinely bonded or insured, the proposed legislation will narrow the number of potential financial consultants available to volunteer firefighter relief associations, with a likely increase in consultant fees, which may adversely affect volunteer firefighter relief associations located some distance from urban centers with a multiplicity of potential financial consultants.

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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY SECOND  
SESSION

HOUSE FILE No. 1295

March 1, 2001

Authored by Haas

Read First Time and Referred to the Committee on GOVERNMENTAL OPERATIONS AND VETERANS AFFAIRS POLICY

1                                   A bill for an act

2           relating to retirement; volunteer firefighter relief

3           associations; setting certain conditions on relief

4           association consultants; amending Minnesota Statutes

5           2000, section 424A.04, by adding a subdivision.

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

7           Section 1. Minnesota Statutes 2000, section 424A.04, is

8           amended by adding a subdivision to read:

9           Subd. 3. [CONDITIONS ON RELIEF ASSOCIATION

10          CONSULTANTS.] (a) As a condition of performing consultant

11          services for a volunteer firefighter relief association, any

12          consultant must:

13               (1) post a bond in an amount equal to the potential adverse

14               financial impact applicable to the activities of the consultant

15               in the event of error, malfeasance, misfeasance, or nonfeasance;

16          or

17               (2) provide evidence of errors and omissions or

18               professional liability insurance in force in an amount equal to

19               the potential adverse financial impact applicable to the

20               activities of the consultant in the event of error, malfeasance,

21               misfeasance, or nonfeasance, from an insurance company licensed

22               to do business in this state.

23               (b) A consultant is any person who is or who represents to

24               the volunteer fire relief association that the person is:

25               (1) an actuary;

1       (2) a licensed public accountant or a certified public  
2 accountant;

3       (3) an attorney;

4       (4) an investment advisor or manager, or an investment  
5 counselor;

6       (5) an investment advisor or manager selection consultant;

7       (6) a pension benefit design advisor or consultant; or

8       (7) any other financial consultant.

9       (c) The bond must be posted with or the evidence of  
10 insurance must be filed with the clerk of the municipality in  
11 which the volunteer firefighter relief association is located.  
12 If the volunteer firefighter relief association is associated  
13 with or subsidiary to an independent nonprofit firefighter  
14 corporation, the bond must be posted with or the evidence of  
15 insurance must be filed with the clerk of the largest  
16 municipality, by population, contracting with the independent  
17 firefighting corporation.

18       Sec. 2. [EFFECTIVE DATE.]

19       Section 1 is effective July 1, 2001.