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Article for *Minnesota Fire Chief*

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## Maintaining a General Fund after Joining the Statewide Plan

*By Rebecca Otto, State Auditor*

Legislation passed by the 2009 Minnesota Legislature created the Statewide Volunteer Firefighter Retirement Plan (Plan). The voluntary plan is administered by the Public Employees Retirement Association (PERA). For the relief associations that join the Plan, PERA takes over all of the public pension fund functions and responsibilities from the volunteer fire relief association.

Joining the Plan that is administered by PERA is different than a relief association choosing to invest through the Minnesota State Board of Investment (SBI). Relief associations have been able to invest their assets through the SBI, while maintaining control over and responsibility for the payout of benefits. Under the Plan, a relief association's entire special fund is transferred to the SBI *and* the association ceases to exist as a public pension fund.

Relief associations that join the Plan may choose to maintain their general fund, and to continue operating as a nonprofit corporation. However, these relief associations must make changes to the structure of their board of trustees and to their governing documents to remain in compliance with Minnesota law.

While the State law creating the Plan makes clear that relief associations which join the Plan no longer exist as public pension funds, these nonprofit corporations are still called "relief associations" in the statute, which contributes to confusion concerning the nature of the new nonprofit corporations. When a relief association joins the Plan, the association no longer falls within the Office of the State Auditor's area of authority, because the relief association's general fund does not contain public funds.

### Board of Trustees Structure

The board of trustees of a relief association operating as a pension fund must be comprised of nine trustees. Six of these trustees are elected by and from the relief

association membership and three of the trustees are from the municipality or municipalities served by the affiliated volunteer fire department. For a relief association affiliated with a city fire department, the municipal trustees must be the fire chief, one elected municipal official, and one elected or appointed municipal official. The municipal trustees vary slightly depending on the legal structure of the fire department with which the relief association is affiliated.

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

### **Articles of Incorporation and Bylaws**

A relief association electing to maintain its general fund after joining the Plan must make changes to its articles of incorporation and bylaws. Changes to these documents must reflect that the association no longer exists as a public pension fund and no longer controls any public funds.

By filing new articles of incorporation and adopting new bylaws, the relief association is acknowledging that it is no longer a public pension fund. Any references to a special fund or to the payment of pensions or benefits from public funds should be removed from the governing documents.

Minnesota law is clear that a relief association which joins the Plan is not authorized to receive the proceeds of any state aid or to receive any municipal funds, and cannot pay any service pension or benefit from its general fund that was not authorized as a general fund disbursement under the articles of incorporation or bylaws of the association in effect before the association joined the Plan.

The articles of incorporation and bylaws should also be changed to recognize the different duties and responsibilities that the trustees have in operating the nonprofit corporation. Other changes that a relief association should make to its articles of incorporation and bylaws include clarifying that the general fund continues to be governed by Minnesota Statutes, section 424A.06 (the section of State law that pertains to relief association general funds), and changing the amendment procedures to remove municipal ratification requirements.

The new articles of incorporation must be filed with the Minnesota Office of the Secretary of State. The new bylaws should be kept on file with the relief association.

To make changes to the articles of incorporation and bylaws in the future, as a nonprofit corporation the relief association will follow the Minnesota Nonprofit Corporation Act, specifically Minnesota Statutes, sections 317A.131 to .141 to amend the articles of incorporation and section 317A.181 to amend the bylaws.

## **Reporting Requirements**

Relief associations which join the Plan and continue to operate as nonprofit corporations must complete an annual renewal with the Minnesota Office of the Secretary of State to keep the association's status as a Minnesota nonprofit corporation active. The annual renewal process can be completed online at <http://mblsportal.sos.state.mn.us/>.

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

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

In addition to State reporting requirements, relief associations may have federal reporting requirements for their general fund with the Internal Revenue Service (IRS). Relief associations should contact the IRS with any questions about their reporting requirements or about how joining the Plan and continuing to operate as a nonprofit corporation could affect their tax-exempt status.

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