

Re: Analysis of Minneapolis Fire Relief Association Executive Secretary Salary Provision  
Revision in 2004 Omnibus Pension Bill - H.F. 2030 (Smith); S. F. 2085 (Pogemiller)  
Attachments: (1) Text of H.F. 2030 (Smith); S.F. 2085 (Pogemiller) Pertaining to the MFRA's  
Executive Secretary Salary  
(2) Legislative Commission on Pensions and Retirement (LCPR) Analysis of Bill

**BACKGROUND**

During 2003, the State Legislature passed H.F. 250 (Smith); S.F. 618 (Pogemiller), which revised state law to permit the MFRA Executive Secretary to receive a salary up to 50 percent of the maximum salary of a first grade firefighter rather than up to 30 percent of that salary. This statute placed a limit on the salary of the Executive Secretary of the MFRA, regardless of whether or not that person is an active or retired member.

After the 2003 bill was passed, staff of the LCPR was reviewing MFRA Board minutes and noted that the MFRA was incorrectly interpreting the statute; the MFRA believed it provided them the authority to pay an unlimited salary to anyone who was not an active member of the MFRA. This was an incorrect interpretation as the legislation only addressed the salary provisions for an Executive Secretary that was an active member of the MFRA; it did not address the salary parameters for an Executive Secretary that was not an active member of the MFRA. LCPR staff wrote a letter to the MFRA, bringing their attention to the issue. The MFRA contacted LCPR staff and indicated that they wished for legislative clarification.

**2004 LEGISLATION**

The 2004 legislation requested by the MFRA would make a distinction between the salary of an Executive Secretary who is an active member of the MFRA, versus that of an Executive Secretary who is not an active member of the MFRA. The legislation requested by the MFRA would have provided them the following authority:

Table 1

If the Executive Secretary is:	An Active Member of the MFRA	Not An Active Member of the MFRA <sup>1</sup>
Salary Level	Up to 50% of the salary of a top grade firefighter (currently approx. \$35,000)	Unlimited
Local Approval?	No	

The language drafted by the MFRA was amended during the session to include a provision for local approval and a cap on the salary of a non-active Executive Secretary. The legislation approved as part of the 2004 Omnibus Pension Bill is as follows:

Table 2

If the Executive Secretary is:	An Active Member of the MFRA	Not An Active Member of the MFRA <sup>1</sup>
Salary Level	Up to 50% of the salary of a top grade firefighter (currently approx. \$35,000)	May not exceed the highest salary currently received by the Exec. Director of the Minnesota State Retirement System, the Public Employees Retirement Assoc., or the Teachers Retirement Assoc.
Local Approval?	Yes	

<sup>1</sup> This salary would apply to an Executive Secretary who was a retired member of the MFRA or to an Executive Secretary who was not a member of the MFRA at all.

## PENSION POLICY CONSIDERATIONS

### 1. Level of Compensation/Fund Size

The 2004 legislation would allow the current Executive Secretary to be paid up to 50 percent of a top grade firefighter's salary for his/her MRFA activities. If the Executive Secretary is an active member of the MFRA, the City also has to pay the current salary for the position held by the Executive Secretary before they assumed their MFRA Executive Secretary duties. For the current Executive Secretary, this pay is currently \$70,600. This City pays this salary to the Executive Secretary for his full time work associated with the MFRA; the Fire Department does not receive any of his services while he holds the Executive Secretary position. The 2004 legislation would pay the current Executive Secretary an additional \$35,000. This would bring the current Executive Secretary's salary to approximately \$105,000, an increase of approximately \$14,000 over his current salary.<sup>2</sup>

Table 3 outlines the size and salary of other pension funds in the state:

Table 3

	MSRS Plans	PERA Plans	TRA	DTFRA	MTRFA	SPTRFA	MERF	MFRA
Exec. Director/ Exec. Sec. Salary	\$95,640	\$95,640	\$95,640	\$106,000	\$135,200	\$96,249	\$117,288	Current: \$91,000 '04 Bill: \$105,000
Staff (FTE's)	51	88.9	84.9	4.5	7	6	4	3
Total Membership	98,349	341,298	136,675	3,493	13,203	9,403	5,854	712
Accrued Liability	\$9 B	\$18 B	\$16.9 B	\$291 M	\$1.7 B	\$1.2 B	\$1.6 B	\$293 M
Current Assets	\$9 B	\$16 B	\$17.4 B	\$278 M	\$957 M	\$899 M	\$1.5 B	\$255 M

Source: Legislative Commission on Pensions and Retirement

### 2. Salary Paid Out of Fund's Assets

The salary of the MFRA Executive Secretary is paid out of the fund's assets. As of December 31<sup>st</sup>, 2003, the funding ratio for the fund was 80.6 percent. While, for the past several years, the City has not had a financial obligation to the MFRA, the City will resume annual payments to the fund starting in 2005. Early estimates of these payments are in the range of \$5 - \$6 million annually.

### 3. City's Pension Reform Effort

The City Finance Department is currently undertaking an analysis of the City's pension fund obligations. This particular legislation might best be analyzed in light of the current reform effort and addressed upon conclusion of the current pension analysis.

### 4. Contingent Upon Board Approval

The final salary amount awarded to the Executive Secretary would be determined by a vote of the fund's governing board. The MFRA Board may best be in the position to decide the appropriate amount.

<sup>2</sup> The Executive Secretary's current salary is the approximately \$70,000 (corresponding to the position he held prior to assuming his Executive Secretary duties), plus 30 percent of a top grade firefighter's salary (approximately \$21,000). The \$14,000 increase is the growth in the Executive Secretary's salary associated with the increase from 30 to 50 percent of a top grade firefighter's salary. As an active member of the MFRA, the Executive Secretary's salary would increase as these two salaries increase, per Fire Department contract settlements.

## ATTACHMENT(1)

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KEY: ~~stricken~~ = old language to be removed  
underscored = new language to be added

NOTE: If you cannot see any difference in the key above, you **need to change the display of stricken and/or underscored language.**

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H.F No. 2030, as introduced: 83rd Legislative Session (2003-2004) Posted on Feb 12, 2004

1.1 A bill for an act  
 1.2 relating to retirement; Minneapolis Firefighters  
 1.3 Relief Association; revising authority to set  
 1.4 executive secretary salary; amending Minnesota  
 1.5 Statutes 2003 Supplement, section 423C.03, subdivision  
 1.6 3.  
 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
 1.8 Section 1. Minnesota Statutes 2003 Supplement, section  
 1.9 423C.03, subdivision 3, is amended to read:  
 1.10 Subd. 3. [COMPENSATION OF OFFICERS AND BOARD MEMBERS.] (a)  
 1.11 Notwithstanding any other law to the contrary, the association  
 1.12 may provide for ~~payment of the following~~ salaries to its  
 1.13 officers and board members as specified in this subdivision.  
 1.14 ~~(1)~~ (b) If the executive secretary is not an active member,  
 1.15 the executive secretary may receive a salary to be set by the  
 1.16 board. If the executive secretary is an active member, the  
 1.17 executive secretary may receive a salary not exceeding 50  
 1.18 percent of the maximum salary of a first grade firefighter.  
 1.19 ~~(2)~~ (c) The president may receive a salary not exceeding  
 1.20 ten percent of the maximum salary of a first grade firefighter.  
 1.21 and  
 1.22 ~~(3)~~ all other elected members of the board, other than the  
 1.23 executive secretary, may receive a salary not exceeding 2.5  
 1.24 percent of the maximum salary of a first grade firefighter.  
 1.25 Sec. 2. [EFFECTIVE DATE.]  
 1.26 Section 1 is effective on the day on which the Minneapolis  
 2.1 City Council and the chief clerical officer of the city of  
 2.2 Minneapolis complete in a timely manner the requirements of  
 2.3 Minnesota Statutes, section 645.021, subdivisions 2 and 3.

## ATTACHMENT (2)

TO: Members of the Legislative Commission on Pensions and Retirement  
 FROM: Ed Burek, Deputy Director  
 RE: H.F. 2030 (Smith); S.F. 2085 (Pogemiller): MFRA; Executive Secretary Salary Provision Revision  
 DATE: March 1, 2004

Summary of H.F. 2030 (Smith); S.F. 2085 (Pogemiller)

H.F. 2030 (Smith); S.F. 2085 (Pogemiller) revises Minnesota Statutes, 2003 Supplement, Section 423C.03, Subdivision 3, the Minneapolis Firefighters Relief Association (MFRA) board member compensation provision, to revise the cap on executive secretary salary (50 percent of first grade firefighter salary), by having that cap apply only if the executive secretary is an active MFRA member. If the executive secretary is a retired MFRA member or a surviving spouse member, no maximum would apply.

Background: MFRA Membership Information; Actuarial Condition

Information on the Minneapolis Firefighters Relief Association (MFRA) membership and the special fund's current actuarial condition is shown in Table 1. The information is based on the most recent information available, the December 2002 actuarial valuation. The fund is quite small in terms of membership, liabilities, and assets, which raises questions about whether it is efficient to continue operating this organization as an independent, freestanding organization. Another issue is the current funding ratio of this plan, which, for reasons discussed later, raises questions of the proper schedule to use to compute plan benefits. A final issue indicated in Table 1 is the unusual treatment of plan expenses. Unlike most Minnesota public pension plans, administrative expenses are not included in total contribution requirements. This treatment hides from view the level of those expenses, which would be a high percentage of active-duty covered salaries, due in part to the few remaining active plan members and the resulting low covered payroll.

The total plan membership is 712 individuals including all benefit recipients, deferred pensioners, and active members. Only 76 active members (11 percent of the total membership) remained as of the valuation date, and that number is less now. Individuals can retire from this association at age 50, and under this plan no additional service credit is received after 25 years of service. This service credit cap may encourage members to leave soon after reaching age 50. The demographic information in the actuarial report indicates that the average age of remaining active members was 53.2, which exceeds the plan's normal retirement age, and the average service of the remaining active members was 27.2 years, which exceeds the maximum service credit obtainable under the plan. In the not too distant future, this plan will have no active members, and the MFRA will operate solely to make investment-related decisions and to distribute benefits to retirees.

The most recent actuarial report indicates that the MFRA has an unfunded obligation of \$37.5 million with a funding ratio of 87.2 percent. The amortization requirement is \$6.3 million or 114.3 percent of covered payroll. The plan has a contribution deficiency, because under law enacted a few years ago (coded as Section 423C.06, Subdivision 6), the city is not required to provide the necessary amortization contribution until two successive actuarial reports indicate an unfunded liability. In the late 1990s through 2001 the actuarial valuations indicated assets in excess of full funding (funding ratios greater than 100 percent). The 2002 actuarial report was the first recent report to indicate unfunded liabilities. The funding ratio under the previous report was 104 percent.

Table 1

## MFRA Actuarial Valuation Data

<u>2002</u>		
Membership		
Active Members		76
Service Retirees		436
Disabilitants		8
Survivors		190
Deferred Retirees		2
Nonvested Former Members		0
Total Membership		712
Funded Status		
Accrued Liability		\$292,677,962
Current Assets		\$255,194,400
Unfunded Accrued Liability		\$37,483,562
Funding Ratio	87.20%	
Financing Requirements		
Covered Payroll		\$5,539,933
Benefits Payable		\$24,064,274
Normal Cost	21.74%	\$1,157,861
Administrative Expenses	0.00%	\$0
Normal Cost & Expense	21.74%	\$1,157,861
Normal Cost & Expense	21.74%	\$1,157,861
Amortization	114.34%	\$6,334,535
Total Requirements	136.08%	\$7,492,396
Employee Contributions	8.00%	\$443,195
Employer Contributions	13.74%	\$731,713
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	0.00%	\$0
Total Contributions	21.74%	\$1,157,861
Total Requirements	136.08%	\$7,492,396
Total Contributions	21.74%	\$1,157,861
Deficiency (Surplus)	114.34%	\$6,334,535

Review of Table 1 indicates the unusual treatment of expenses. For most retirement funds, law requires that a pension fund's total financial requirements are the sum of normal cost, administrative expenses, and, if a fund has unfunded liabilities, a required amortization contribution. In the above table, the administrative expense entry is zero, despite having considerable expenses for a small fund. This unusual treatment reflects a 1989 law (Laws 1989, Chapter 319, Article 19, Section 4) which states that in determining the financial requirement of the Minneapolis Police and Minneapolis Fire Relief Associations, administrative expenses are to be ignored. Due to that law, administrative expenses are deducted from MFRA or the Minneapolis Police Relief Association (MPRA) assets, whichever is applicable. If a plan has an unfunded liability, this treatment adds to that unfunded liability and causes the administrative expenses to be amortized. Amortizing a current expense is not the preferred treatment from a policy standpoint. The city presumably supported this treatment when the applicable law was enacted, since at least in the short-term it lowered the total city contribution requirement. But at the same time, this treatment makes the plan's expenses less obvious to the city, to the MFRA membership, or to any other party who might be interested in controlling those expenses.

Problems with MFRA Statutes and Plan Administration

Given the limited available Commission meeting time, an issue for the Commission to consider is whether the Commission should devote time to reconsidering the MFRA executive secretary salary provision rather than addressing more fundamental problems in MFRA statutes and the MFRA's administration of its benefit plan as reflected in those statutes. There has been little effective legislative review of MFRA legislative proposals or of MFRA administration of its provisions. Commission staff has been concerned that the MFRA may be providing surviving spouse benefits to certain individuals who do not qualify under prior MFRA special law, and the codified language which enables those benefits to be paid were not identified as benefit improvements or enhancements. Under requirements in 2001 and 2002 law, the MFRA executive secretary presumably should have reported these surviving spouse provisions as provisions needing legislative action to correct the errors. There is considerable evidence that MFRA disabilitants have received benefits in excess of maximum amounts permitted in law, particularly when the disabilitant reached normal retirement age and is transferred from the disabilitant category to the normal retirement category. The final concern mentioned here is that the MFRA retirement annuity provision is misdrafted. A literal reading of that provision requires annuities to be reduced because the MFRA funding ratio has fallen below 90 percent. It is unlikely that that was the intention of the MFRA or the Legislature, but that is the treatment required under a literal reading of the law. Clarification of MFRA benefit provisions, in general, is needed. The MFRA executive secretary has indicated that he has difficulty interpreting these provisions without the assistance of a legal advisor. These issues are discussed in more detail in Appendix A.

### The 2003 MFRA Executive Secretary Compensation Legislation

During 2003, the Legislative Commission on Pensions and Retirement heard H.F. 520 (Smith); S.F. 618 (Pogemiller): MFRA; Increasing the Salary of the Executive Secretary, which revised Section 423C.03 to permit the MFRA executive secretary to receive a salary up to 50 percent of the maximum salary of a first grade firefighter rather than up to 30 percent of that firefighter salary. Senator Pogemiller offered an oral amendment which clarified the effective date language, allowing the salary increase to be retroactive to September 2002, the first of the month following the date on which the membership voted to amend the bylaws to increase that salary. The amendment was adopted.

Mr. Brian Rice, lobbying on behalf of the MFRA, and Mr. Robert Wetherille, an MFRA board member, spoke in support of the bill. The MFRA executive secretary was not present at the meeting. H.F. 520 (Smith); S.F. 618 (Pogemiller) was recommended to pass as amended. The provisions that were enacted were substantively identical to the bill as amended by the Commission, and passed as Laws 2003, First Special Session, Chapter 12, Article 11, Sections 1 and 4.

The MFRA is now indicating that the language it had drafted in 2003 was not what the MFRA intended. It is now seeking to revise the 2003 enactment. The executive secretary compensation provision in statute places a limit on executive secretary salary, regardless of who is holding that office. The MFRA now indicates that it believed the 2003 legislation permitted paying the executive secretary up to 50 percent of top grade firefighter salary if the individual is an active MFRA member, while giving the MFRA complete freedom to set salary if the executive secretary is not an active MFRA fund member.

Commission staff became aware that the MFRA was misinterpreting its executive secretary compensation provision several months after the 2003 legislation passed. Commission staff reviewed MFRA board minutes and noted that the MFRA board had revised its bylaws. The claimed purpose of the bylaw changes was to conform to the 2003 legislation, but the effort was flawed. Under the revised bylaw, the maximum executive secretary salary is 50 percent of a top grade firefighter salary if the executive secretary is an active member of the MFRA, and if the executive secretary is not an active member, the MFRA board claimed it was free to set the salary without restriction. Commission staff wrote a letter to the executive secretary indicating this conflict between the executive secretary salary

statute and the bylaw. Staff was later contacted by Mr. Erdman, who works for a lobbying firm representing the MFRA, and were told that the MFRA wants the treatment now specified in its bylaws rather than the statute. Commission staff was asked to prepare language to provide that treatment. The result is H.F. 2030 (Smith); S.F. 2085 (Pogemiller).

The 2003 MFRA executive secretary salary bill was a very simple piece of legislation. That legislation changed one word in the provision, revising "30" to "50." It is troubling that the executive secretary and board seem to lack an understanding of the authority provided by the applicable statute, either before or after the 2003 change. More generally, what occurred in 2003 indicates that the MFRA executive secretary and board were unable to effectively communicate their intention to Mr. Rice and his law firm, and to other MFRA lobbyists, to enable the legislation to be drafted by the Revisor of Statutes as the MFRA intended. Similar problems may have occurred with prior MFRA legislative efforts. The events also indicate that although the MFRA incurred significant lobbying expenses in an effort to have the 2003 legislation enacted and at least one MFRA board member testified in support of the 2003 legislation, the executive secretary and board did not understand the MFRA executive secretary compensation provision, either before it was revised in 2003 or after. Following the 2003 legislation, the MFRA revised the bylaws to reflect the treatment they desired, rather than the treatment reflected in law enacted at their request.

#### Situation after Passage of the 2003 MFRA Executive Secretary Compensation Provision

The 2003 legislation allowed the MFRA to increase the salary received by the executive secretary from 30 percent of a top grade firefighter to 50 percent. According to material recently provided by Mr. Rice, the current pay of a top grade firefighter is \$70,090. Half of that amount would be \$35,045, which is paid by the relief association out of its assets. Mr. Rice has indicated that the executive secretary also is paid (by the city) the salary currently payable for the fire department position the individual held before becoming executive secretary. The current executive secretary was a fire inspector and receives the pay of a Fire Captain with maximum years of longevity service. That pay is \$70,600. The MFRA executive secretary position is full-time, and the City of Minneapolis is required to continue to pay that individual although no services are provided to the fire department while the individual holds the executive secretary position. Since no service is provided by the executive secretary other than to the MFRA, the total executive secretary compensation of MFRA services is the sum of the two amounts, the amount paid by the city and the amount paid by the relief association. This amount is shown in Table 2. The table also includes the salaries of other executive secretaries/executive directors of larger Minnesota pension funds and information on the size of their respective staff, since these individuals are the managers of these organizations. Salary information for the executive directors of the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teacher Retirement Association (TRA) was obtained from the Legislative Coordinating Commission. The executive director/executive secretary salary and staff complement information for the other pension plan administrations was provided through an information request to those directors.

The MFRA has a very small staff compared to the staff managed by the MSRS, PERA, and TRA administrators. Total individuals covered by the MFRA, the Minneapolis Employees Retirement Fund (MERF), the Minneapolis Police Relief Association (MPRA), and the first class city teacher plans are slight compared to the large statewide pension plan administrations, whether measured by active employees or all members (active, disabled, deferred annuitants, retirees and survivors). The closed funds (MFRA, MPRA, and MERF) will lose all or nearly all of their remaining active members through retirement in the next few years. At that time, these fund administrations will exist solely to invest assets and to distribute benefits to its retired membership and survivors. The salaries of the MSRS, PERA, and TRA executive directors lag behind all of the other plan directors/executive secretaries, except the MPRA. In some cases, the difference between the MSRS, PERA, and TRA salary and those of other

plan directors is quite large. The MSRS, PERA, and TRA directors typically have responsibility to administer more pension plans than the small pension administrations, and are responsible for managing far more staff. Unlike the other fund administrators in the group, the MSRS, PERA, and TRA administrators do not have responsibility for investing the assets of their plans, which is done by the State Board of Investment (SBI). However, these three administrators are on the Investment Advisory Council, which provides investment advice to SBI, an important investment-related responsibility.

The executive director of the Minneapolis Employees Retirement Fund has indicated that her salary is set at 95 percent of the Governor's salary. The salary of the Minneapolis Teachers Retirement Fund Association (MTRFA) executive director is considerably in excess of that amount. At some point the Commission may wish to review laws, if any, governing the MTRFA executive director salary and those of the other pension administrations included in Table 2.

Table 2  
Executive Director Salary, Staff Size, Other Organization Size Information

	<u>MSRS Plans</u>	<u>PERA Plans</u>	<u>TRA</u>	<u>DTRFA</u>	<u>MTRFA</u>	<u>SPTRFA</u>	<u>MERF</u>
Exec. Dir./ Exec. Sec. Salary	\$95,640	\$95,640	\$95,640	\$106,000	\$135,200	\$96,249	\$114,281
Staff (full- time equiv. pos.)	51	88.9	84.9	4.5	7	6	
Membership Active	52,491	153,169	71,916	1,373	5,381	4,331	701
Service Retirees	19,369	48,970	33,290	1,019	3,334	1,988	3,741
Disabilitants	71,860	202,139	558	14	23	21	191
Survivors	2,736	7,610	2,351	74	285	239	1,011
Deferred Ret.	13,326	33,476	9,304	187	1,123	858	181
Nonvested Former Memb.	16,062	41,086	19,256	826	3,057	1,966	
Total Memb. Funded Status	98,349	341,298	136,675	3,493	13,203	9,403	5,851
Accr. Liability	\$9,030,916,000	\$18,229,693,000	\$16,856,379,000	\$291,109,000	\$1,671,982,000	\$1,189,361,000	\$1,645,921,000
Current Assets	\$8,953,671,000	\$15,965,995,000	\$17,384,179,000	\$278,467,000	\$956,913,000	\$898,760,000	\$1,519,420,000

#### Pension Policy Issues

H.F. 2030 (Smith); S.F. 2085 (Pogemiller) revises Minnesota Statutes, 2003 Supplement, Section 423C.03, Subdivision 3, the Minneapolis Firefighters Relief Association (MFRA) board member compensation provision, to revise the cap on executive secretary salary (50 percent of first grade firefighter salary), by having that cap apply only if the executive secretary is an active MFRA member. If the executive secretary is a retired MFRA member or a surviving spouse member, no maximum would apply. The bill raises the following issues:

1. Need for Change/MFRA Priorities. The issue is whether the Commission should consider H.F. 2030 (Smith); S.F. 2085 (Pogemiller), which again revises the MFRA executive secretary compensation provision, given more urgent problems which remain unaddressed in the MFRA service pension provision and other benefit-related provisions of this plan.
2. Closed Fund Efficiency Issues. The MFRA, MPRA, and MERF were closed to new members in 1980 or earlier. The total membership covered by these organizations is falling, and in a few years no more than a few dozen active (non-retired) members will remain. Currently, all of these organizations are separate, with separate staff, consultants and lawyers, and investment programs, resulting in a structure that is increasingly inefficient as these organizations dwindle in size. The current bill continues this status quo. The Commission may wish to consider that continuing the current structure is inefficient and harmful both to taxpayers and to the retired membership of these organizations. The MFRA and MPRA have provisions which distributes a portion of fund assets to retirees as additional post-retirement increases. Administrative costs lower fund assets, reducing these distributions.
3. Justification for Additional Authority. The legislation would permit the MFRA board to have complete flexibility in setting executive secretary salary if that job is not held by an active member, consistent with any other law which may constrain that salary. (For example, at least some pension funds are constrained by law to offering salaries not exceeding 95 percent of the state governor's salary.) The Commission may wish to inquire whether the MFRA believes it is or would be subject to this or similar requirements.

One argument for providing additional flexibility is that many pension funds do not have any specific provision in their own plan law restricting salary. Under the bill, the MFRA would be treated somewhat more comparably to those organizations. On the other hand, the Commission may feel that H.F. 2030 (Smith); S.F. 2085 (Pogemiller) should not be enacted if the Commission is concerned that the MFRA has not shown sufficient restraint to date regarding the executive secretary's salary or in controlling other administrative expenses. The Commission may also be concerned that more freedom to set salary should not be permitted given the treatment of administrative expenses in MFRA actuarial work. The executive secretary salary, like any salary the MFRA pays, is an administrative expense. Unlike most pension plans, MFRA plan administrative expenses are not added to plan contribution requirements, which may lead to inattention in controlling these costs.

#### Possible Amendments for Commission Consideration

LCPR04-098 would require that MFRA and MPRA administrative expenses must be included in plan actuarial work and be part of the plan's contribution requirement. The amendment would have financial implications for the city since it is responsible for covering the required contributions of these plans. The Commission may wish to consider this amendment if the Commission is concerned that the current situation does not encourage the MFRA to control expenses.

LCPR04-099, an alternative to LCPR04-098, differs from that amendment by applying only to the MFRA.

LCPR04-100 could be used if the Commission concludes that more flexibility to set salary should be provided to the MFRA board, but that some constraints should remain. Under this amendment, if the executive secretary is not an MFRA active member, the salary could not exceed a percentage, to be specified by the Commission, of the highest salary paid to the executive director of MSRS, or PERA, or TRA. This percent could be less than one, if the Commission concludes that the MFRA executive

secretary, if not an active member, should never exceed the salaries received by the MSRS, PERA, and TRA directors, or it could be more than one, if the Commission believes that the executive secretary's duties may justify that treatment.

LCPR04-101 is an alternative to LCPR04-100. Amendment LCPR04-101 is comparable to LCPR04-100, except that LCPR04-101 also applies the same salary constraint to an MFRA executive secretary who is an active MFRA member. The current executive secretary is exempted from this limitation. If the Commission does not wish to exempt the current executive secretary, Commission staff can suggest an oral amendment to remove that exemption.

#### APPENDIX A ISSUES OF MFRA LAW AND PLAN ADMINISTRATION

1. The Process to Codify MFRA Provisions. Minneapolis Firefighters Relief Association (MFRA)-retained lawyers drafted various proposals and some were introduced during legislative sessions. Some of these proposals were discussed in legislative hearings, but the MFRA decided that benefit enhancements had higher priority and urged the Legislature to focus on benefit enhancements rather than its codification proposal. For example, during the 2000 Legislative Session the MFRA requested that the Legislature delay consideration of its codification proposal to allow time for legislative consideration of its excess-asset-distribution proposal, which would distribute to retirees a portion of assets in excess of 110 percent funding. Delays in the codification effort required drafts to be revised. The proposals were reworked to incorporate newly enacted provisions and any other revisions that the MFRA contended were needed. A constant issue with those drafts was whether the drafts fully and correctly captured the various MFRA special law provisions.

The legislation that became the MFRA chapter of statutes, Chapter 423C, was enacted and codified in 2001. The review process during 2001 was complicated by intentionally mixing a redraft/codification effort with benefit enhancements and benefit revisions, and by Commission staff being informed only a few hours before the Commission meeting that the MFRA codification proposal would be added to the meeting agenda in the form of a delete-everything amendment (A01-0297) to the applicable bill, S.F. 1466 (Pogemiller), H.F. 1477 (Mares). Only minimal time was permitted for Commission staff and legislative review of that amendment, and there was no time to provide a staff memo. Only the most obvious cleanup issues were addressed. Lawrence Martin, Commission Executive Director, reviewed the delete-everything amendment and noted 34 problem areas with that draft document. Mr. Martin and Mr. Brian Rice, working on behalf of the MFRA, met briefly a few hours before the Commission meeting to discuss those items, and Mr. Martin prepared additional amendments for Commission consideration to clean up the most obvious problems. The MFRA language that passed the Legislature that year addressed some of the issues and errors that had been identified, but some errors remained and some policy questions were not addressed.

The 2001 legislation did include a statement that the only benefit improvement intended in the legislation was a benefit improvement for certain unmarried firefighters, a provision intended to boost the benefit of certain unmarried firefighters to compensate them for the value of automatic surviving spouse coverage, which presumably they would never use. Any other provision in the 2001 legislation which increases or otherwise revises benefits compared to the prior special or general law was in error, and was to be reported by the MFRA executive secretary to the city and to the Commission for corrective action. At least one benefit correction was made in 2002. Others may remain.

2. Ratification of Possible Prior Improper Benefits. As fiduciaries, the MFRA board and executive secretary have a responsibility to provide proper benefits as specified in MFRA law and other applicable general and special law. The MFRA follows a practice of having the MFRA board approve the benefit for every disabilitant or service retiree, following the eligible individual's application for that benefit, and also authorizing payments to surviving spouses following the death of the retired or disabled firefighter. The applicable board motions are noted in the minutes for the MFRA board meetings. Some years ago Commission staff reviewed MFRA minutes and questioned the benefits that the MFRA was awarding to its disabilitants. Based on our review of MFRA laws, it appeared that the benefits provided to MFRA disabilitants exceeded amounts permitted under law. The most questionable treatment occurred when disabilitants reach normal retirement age for the plan. At that point, they are no longer considered as disabled and are to be transferred to retirement rolls. The problem was that the MFRA was increasing the benefits of these disabilitants at the time of retirement. This was done by MFRA board motions which granted the individual however much additional service credit was needed to give the individual 25 years of service credit, which is the service credit amount necessary to qualify for the maximum service pension. The MFRA board has no authority under law to grant service credit, and general law specifically prohibits any increase in benefit when these disabilitants transfer to retirement. Therefore, the benefit these individuals should have received as new pension retirees is the same amount they received as disabilitants.

Although there was considerable correspondence between the Commission staff and the MFRA on this disability issue, there was no legislative discussion of this matter. The MFRA may have dealt with this matter indirectly, through a provision in the 2001 codification (Laws 2001, First Special Session, Chapter 10, Article 15, Section 16), which reads, "all pensions and benefits payable from the Minneapolis firefighters relief association in force on the effective date of this section as reflected in the records of the relief association as of that date continue." This ratified any benefit that the MFRA had approved for payment, whether or not the benefit was consistent with law. This ratification provision received no legislative discussion. In addition to a problem in the treatment of disabilitants, the MFRA may also have provided one or more surviving spouse benefits to individuals who did not qualify under existing law. While the language would ratify any past MFRA actions, that ratification language would not apply to any new cases that occurred after the 2001 legislation passed, if the MFRA were to continue its past practice regarding disability benefits, and possibly some surviving spouse benefits.

3. 2002 Session Actions. During the 2002 Session, legislation was introduced (S.F. 2531 (Pogemiller); H.F. 2695 (Mares)) to address various perceived deficiencies in the 2001 MFRA codification provisions. The bill passed with little Commission or legislative review. The 2002 bill made several benefit-related adjustments, which were stated to be corrections of the prior legislation and not benefit improvements. Unfortunately, there is continuing controversy regarding whether all benefit improvements that were in the 2001 and 2002 legislation have been identified.

The 2001 legislation had set the duty-related disability benefit at 42 units. In 2002, the MFRA acknowledged that benefit was overstated, and the benefit stated in the provision (Section 423C.05, Subdivision 5) was reduced to 41 units. This pension level is lower than the maximum service pension amount permissible when the plan funding ratio is 90 percent or greater.

It is not known whether the MFRA intends to continue its practice of increasing the benefit when the disabilitant reaches normal retirement age. That action would be inconsistent with

its laws. At a meeting with MFRA to discuss S.F. 2531 (Pogemiller); H.F. 2695 (Mares), Commission staff again requested that the MFRA indicate that H.F. 2030 (Smith); S.F. 2085 (Pogemiller): staff again requested that the MFRA indicate the legal support for its policy of increasing pensions for disabilitants when they transfer to the normal retirement category. It was hoped those materials would be available for Commission consideration at its meeting. The Commission chose to act on the bill without any discussion of this issue or of any other matters raised in the staff memo.

Other changes in the 2002 provisions increased the family benefit maximum from 41 to 42 units and revised the surviving spouse definition. The surviving spouse revision included as a surviving spouse an individual married to a retired or deferred member providing that the marriage occurred at least one year, rather than two years, prior to termination of service. If the MFRA cannot demonstrate that these changes are consistent with its prior special law, then the first change is a benefit improvement while the second is an eligibility expansion, which will increase total benefit payments from the plan because a wider group will eligible for the benefits.

Another MFRA survivor provision also deserves attention. The MFRA has a provision which pays survivor benefits to individuals who do not meet the usual MFRA surviving spouse definition. Under this alternative surviving spouse language (found in Section 423C.05, Subdivision 7), covering certain situations where marriage occurs after retirement, the survivor is eligible for a surviving spouse benefit providing the marriage occurred at least two years prior to death. The prior special law, enacted in 1997, required that the marriage occurred at least five years prior to death. The two-year rather than five-year requirement stated in the 2001 codification is a benefit eligibility expansion that should have been identified as a benefit improvement.

4. Problem with MFRA Service Pension Provision. At the current time, probably the most important MFRA provision needing clarification is the MFRA service pension provision. The MFRA may wish to seek a legislative review of its service pension provision.

In this case, the problem is not a failure to correctly reflect the prior special law in the 2001 MFRA codification. Rather, the problem is with requirements stated in 1997 special laws, which was copied into the codified provisions enacted in 2001. Specifically, the MFRA service pension provision, now coded as Section 423C.05, states that MFRA service pensions are dependent upon the plan's funding level as indicated in the *most recent* annual actuarial valuation. One set of benefits is payable if the funding ratio in that valuation is less than 90 percent, with benefits increasing with years of service up to a 41-unit benefit permitted for those with 25 or more years of service credit. A different payment schedule is authorized if that most recent actuarial valuation specifies a ratio of at least 90 percent but less than 92.5 percent. The second schedule permits higher benefit payouts to members with 20 or more years of service credit, and permits a 41.5-unit benefit for those with 25 or more years of service credit. A third schedule, permitting a maximum payment of 42 units for the 25-or-more-year retirees, is authorized if the funding ratio according to the most recent actuarial valuation is at least 92.5 percent. A copy of the MFRA service pension provision, Section 423C.05, Subdivision 2, is attached. Commission staff has commented on several occasions on this unusual "conditional" benefit schedule approach that was enacted in 1997. If the benefit schedule to be used is based on the funding level indicated in the most recent actuarial valuation, then service pension benefit levels must be reduced when funding ratios deteriorate. Mr. Brian Rice, representing the MFRA, has stated that, notwithstanding the language in the plan's service pension provision and other MFRA provisions, (notably,

Section 423C.12, Right to Reduce Pensions) which states that benefits can be reduced, the board contends that service pension benefit levels cannot be reduced.

Commission staff does not doubt that arguments can be made supporting a contention that the MFRA service pension cannot or should not be reduced if the MFRA funding ratio falls. Indeed, the MFRA and the Legislature in all likelihood intended that pension should not be rolled back. The likely problem is faulty drafting of the law. The MFRA should not have put itself in a position of having to fight a battle if the State Auditor were to decide that the MFRA is currently overpaying benefits to some or all of its members because of the wording of its service pension provision. During the late 1990s, there was no immediate need to resolve this question because investment markets were very strong, and funding ratios were increasing year after year. The situation has changed. As noted previously, the MFRA funding ratio has fallen from well over 100 percent to its current level of 87.2 percent. A literal reading of the MFRA service pension provision requires that the MFRA revert back to using the lowest service pension schedule, the one required when the funding ratio is under 90 percent.

Following release of the December 2001 MFRA actuarial valuation, the MFRA actuary warned the MFRA board that the 2002 actuarial valuation would show a sharp deterioration in the MFRA funding condition. It would have been reasonable for the MFRA to seek clarification of its service pension provision during the 2003 Legislative Session. Instead, the MFRA focused on revising the MFRA board member compensation provision (Section 423C.03, Subdivision 3) to increase the salary of the MFRA executive secretary.

#### APPENDIX B MFRA HISTORY

The Minneapolis Firefighters Relief Association (MFRA) was established in 1868, initially to provide relief to disabled firefighters and their families at a time when the Minneapolis Fire Department was a volunteer fire department. After the department became a paid fire department, the association incorporated under Minnesota law in 1886. The association began paying service pensions to retiring firefighters in 1897.

The MFRA is managed by a governing board of 12 members:

- five active firefighters,
- five retired members or surviving spouses, and
- two city of Minneapolis representatives appointees.

In addition to maintaining records and determining benefit amounts, the governing board is responsible for investing all plan assets of the special fund, general fund, and health insurance accounts.

In Minnesota, as public employee pension coverage has developed, there is a combination of statewide public pension plans and local public pension plans. The MFRA is one of the state's local public employee pension plans and one of the few remaining local plans for police or paid firefighters. The other remaining local public safety plans are the Minneapolis Police Relief Association, Fairmont Police Relief Association, and Virginia Fire Relief Association.

Membership in the MFRA and other local police and paid fire relief associations which accepted the various state amortization aids were closed to new members in 1980. Police and paid fire hires after

that date are covered by the statewide Public Employees Retirement Association Police and Fire (PERA-P&F) Plan. As a result of closing the local funds, their membership is aging. At the present time most of the membership is retired, with active members representing an ever-decreasing minority.

Initially, there were nearly 50 of these local police and paid fire relief associations. Many years ago, a few local relief associations consolidated into PERA-P&F under special legislation drafted for each association. More recently, in 1987, the Legislature developed a general law procedure (coded as Minnesota Statutes, Chapter 353A) to be used by any police or paid fire relief association that voluntarily elects to consolidate with PERA-P&F. Under these voluntary consolidations, plan administration shifts to PERA's staff, the State Board of Investment (SBI) invests the association's assets, and the prior relief association members receive an expanded array of options. Active members can elect the local plan benefits in their entirety or PERA-P&F benefits in their entirety. Deferred pensioners and existing annuitants of the relief association continue to have their benefit as determined by the applicable local relief association laws, but they can elect to have post-retirement adjustments from the time of consolidation forward computed under the SBI Post Fund procedures rather than the escalator in local plan law. Since the general law consolidation procedure passed in 1987, over 40 local police and paid fire relief associations have used that process to consolidate into PERA-P&F.