



H.F. 1180
(Hausman)

S.F. 1877
(Anderson)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): Minneapolis Firefighters Relief Association
Relevant Provisions of Law: Special Law Provision
General Nature of Proposal: Special Eligibility for Surviving Spouse Benefits
Date of Summary: April 3, 2008

Specific Proposed Changes

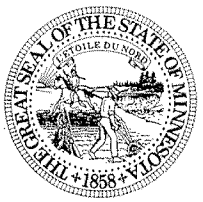
- Grants Roberta Espey Griffin, the surviving spouse of deceased Minneapolis retired firefighter Artis Griffin, a surviving spouse benefit from the Minneapolis Firefighters Relief Association notwithstanding that the post-retirement marriage did not last for the two-year minimum duration period.

Policy Issues Raised by the Proposed Legislation

1. Equitable considerations.
2. Appropriateness of overriding Artis Griffin's prior decisions on survivor coverage.
3. Erosion of Minneapolis Firefighters Relief Association survivor entitlement requirements.
4. Actuarial cost.
5. Extent of Minneapolis city support for the proposed eligibility expansion.
6. Precedent/other potential claimants.

Potential Amendments

Amendment LCPR05-372 Replaces special law provision with general MFRA law provision implementing a one-year marriage duration requirement.



TO: Members of the Legislative Commission on Pensions and Retirement

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

RE: S.F. xxx (Anderson); H.F. xxx (Hausman): MFRA; Surviving Spouse Benefit for a Certain Ineligible Surviving Spouse (Document LCPR05-371)

DATE: January 26, 2006

Summary of Document LCPR05-371

Draft proposed special legislation, Document LCPR05-371, grants Roberta Espey Griffin, as the intended sole member of a class defined by several relevant demographic items rather than specifically named to comply with the accepted interpretation of Article XII, Section 1, of the Minnesota Constitution, special entitlement to receive a surviving spouse benefit from the Minneapolis Firefighters Relief Association despite not meeting the minimum marriage duration requirement of Minnesota Statutes, Section 423C.05, Subdivision 7, that is applicable to a post-retirement marriage.

Public Pension Complaint of Roberta Espey Griffin

Roberta Espey Griffin is the widow of a deceased retired Minneapolis firefighter, Artis L. Griffin (7/17/1941 – 7/4/2005), and because she married Mr. Griffin after he retired from the Minneapolis Fire Department and was not married to Mr. Griffin for at least two years prior to his death, she is not entitled to a full surviving spouse benefit from the Minneapolis Firefighters Relief Association on his account.

Roberta Griffin was married to the late Artis L. Griffin for one year, nine months, and 20 days, or 72 days shy of the minimum marriage duration applicable to the Minneapolis Firefighters Relief Association for entitlement to a surviving spouse benefit in Minnesota Statutes, Section 423C.05, Subdivision 7. Roberta Griffin and Artis Griffin additionally resided together essentially as husband and wife for 35 years before their marriage, with Roberta Griffin indicating that she declined to marry Mr. Griffin at an earlier date because of her prior marriage that had ended in divorce.

Artis Griffin apparently was in good health when he and Roberta Espey married, there was not any apparent history of premature death in his family, and the marriage reportedly was motivated solely as a recognition of the duration of their relationship and to make the continuing relationship fully legal. Artis Griffin had completed a physical examination one week before his death, which occurred while he was taking his morning walk in the neighborhood and after he had completed his daily exercise regimen.

Because of the combined length of their cohabitation equivalent to a common law marriage and their legal marriage and their parenting of a child together, and because their marriage was undertaken not as a ruse to obtain widow's benefits in light of any health problem known to affect Artis Espey Griffin, Roberta Griffin believes that she should be recognized as Artis Griffin's surviving spouse for purposes of eligibility for benefits from the Minneapolis Firefighters Relief Association and seeks special legislation to that effect.

Background Information on the Minneapolis Firefighters Relief Association and MFRA Survivor Benefits

Background information on the Minneapolis Firefighters Relief Association (MFRA) and on MFRA survivor benefits is set forth in Attachment A.

Discussion and Analysis

Draft proposed special legislation LCPR05-371 would make Roberta Espey Griffin, the surviving spouse of the late retired Minneapolis firefighter, Artis Griffin, who is not currently eligible for a surviving spouse retirement benefit from the Minneapolis Firefighters Relief Association because her marriage with Artis Griffin was a few months shorter than the required two years, eligible for a Minneapolis Firefighters Relief Association surviving spouse benefit, retroactive to August 1, 2005, the first of the month next following Mr. Griffin's death.

Document LCPR05-371 raises several pensions and related public policy issues that could merit consideration and discussion by the Legislative Commission on Pensions and Retirement, as follows:

1. Equitable Considerations. The policy issue is whether or not the equitable considerations surrounding the life and death of Artis Griffin support the enactment of a special entitlement for a Minneapolis Firefighters Relief Association surviving spouse benefit for Roberta Espey Griffin, the spouse of Mr. Griffin at his death despite the fact that their actual legal marriage did not extend for the two-year duration requirement of State law. Roberta Espey Griffin essentially requests that the Legislature recognize the combination of a short solemnized marriage period and a considerable period of cohabitation or common law marriage as sufficient to meet the minimum marriage duration requirement of Minnesota Statutes, Section 423C.05, Subdivision 7, because of the total length of their relationship (37 years), of their parenting of a child together, of Artis Griffin's apparent good health prior to death, and of a lack of any indication of an intent to enter into a marriage solely to gain eligibility for a survivor benefit upon Mr. Griffin discovering some health issue or medical frailty. Mrs. Griffin has apparently provided you with some documentation in the form of pictures and other items of the duration and nature of her relationship with Artis Griffin. Testimony from Mrs. Griffin will probably be needed for the Commission to gain a sense of her equitable claims. While the Commission staff is not in a position to investigate the factual elements offered by Mrs. Griffin, there are some items that may raise adverse equitable considerations. Minnesota, in Minnesota Statutes, Section 517.01, and under Carlson v. Carlson, 256 NW2d 249 (1977), does not recognize common law marriages, has not since 1941, and is one of the 38 states that did not or no longer recognize common law marriages. Even in states recognizing common law marriages, additional requirements beyond simple cohabitation usually must be demonstrated before an unsolemnized marriage is recognized as a legal marriage, generally including the capacity to marry, regarding themselves as spouses and representing themselves to others as husband and wife for an extended period. It is unclear from the documentation currently provided that Roberta Espey held herself out as Artis Griffin's spouse before her marriage to Artis Griffin. Mr. Griffin's health situation is also unclear, since a brief history of the career of Artis L. Griffin with the Minneapolis Fire Department, apparently prepared by the department, indicates that he was placed on "medical layoff" for the four months immediately before his retirement in August 1999. Additional testimony by Roberta Espey Griffin could clarify the equitable considerations that are applicable to her pre-marriage relationship with Artis Griffin and to this tragic occurrence for her and her family.
2. Appropriateness of Overriding Artis Griffin's Prior Decisions on Survivor Coverage. The policy issue is the appropriateness of the Legislature becoming involved in the choice or failure to choose made by Mr. Griffin about the provision of survivor coverage on his behalf. While related to the equitable considerations outlined in the first policy issue, this issue is sufficiently complicated to be treated separately. Automatic status-based survivor coverage is a frequent component of Minnesota public safety employee pension plan coverage, with the person who was the surviving spouse of a police officer or firefighter who died being entitled to a significant surviving spouse benefit automatically by virtue of the status of being the spouse. This significant survivor coverage feature of public safety employee retirement plans presumably reflects an elevated concern by police officers and firefighters for their enhanced employment casualty risks. If Artis Griffin and Roberta Espey had married before Artis Griffin's retirement in 1999 or had married earlier than September 2003, survivor benefit eligibility for Roberta Espey Griffin would not now be a question. When Artis Griffin retired in 1999, he also did not select an optional annuity form covering Roberta Espey. While survivor coverage may be a priority for Mrs. Griffin given the unfortunate recent circumstances, it is unclear that survivorship benefit coverage was a priority concern of Mr. Griffin at those times during his career when the question logically would arise and it is not clear that it is appropriate for the Legislature to interject itself into the situation after the fact.
3. Erosion of Minneapolis Firefighters Relief Association Survivor Entitlement Requirements. The policy issue is the appropriateness of further ad hoc modifications in the requirements for a survivor benefit from the Minneapolis Firefighters Relief Association. Until 1997, the Minneapolis Firefighters Relief Association provided survivor coverage only to surviving spouses who attained the status of spouse prior to the firefighter's retirement and while the person retained the status of spouse. Thus, a post-retirement divorce would end the spouse's benefit entitlement and a post-retirement marriage of any duration would not bring a surviving spouse benefit entitlement. Apparently because of the greater number of remarriages by retired Minneapolis firefighters in recent years, the Minneapolis Firefighters Relief Association sought in 1997 and was granted expanded surviving spouse benefit eligibility for post-retirement marriages if the marriage continued for at least five years under Laws 1997, Chapter 233, Article 4, Section 12. The five-year marriage duration requirement was apparently intended to prevent sham "death bed-type" marriages entered into solely to gain a benefit that otherwise would not payable. The five-year marriage duration requirement was shortened to two years for post-retirement marriages in 2001, as part of a number of substantive changes that

accompanied the Minneapolis Firefighters Relief Association recodification (First Special Session Laws 2001, Chapter 10, Article 15, Section 5, Subdivision 7). If exemptions to the two-year duration requirement that was pursued by the Minneapolis Firefighters Relief Association in 2001 are enacted on a case-by-case basis by virtue of equitable considerations, survivor benefit eligibility for the Minneapolis Firefighters Relief Association threatens to become a function of the familiarity of petitioners with the legislative process or of a relationship by a petitioner with a legislator rather than objective standards.

4. Actuarial Cost. The policy issue is the actuarial cost of the proposed extension of eligibility for surviving spouse benefits to Roberta Espey Griffin. In her correspondence, Mrs. Griffin indicates that she is approximately 70 years old and would be eligible for surviving spouse benefits of \$1,785 per month. The commission staff estimates that the special eligibility proposal would likely produce an actuarial cost for the Minneapolis Firefighters Relief Association in the neighborhood of \$265,000. The Minneapolis Firefighters Relief Association may be able to provide a more precise actuarial accrued liability increase estimate in their testimony. Because the service pension payable to Artis Griffin was a single life annuity, upon Mr. Griffin's death, the Minneapolis Firefighters Relief Association had no further liability on his account and the total present value of the proposed surviving spouse benefit would be added to the Minneapolis Firefighters Relief Association unfunded actuarial accrued liability. The current (12/31/2004) actuarial condition of the Minneapolis Firefighters Relief Association is as follows:

	2004	
<u>Membership</u>		
Active Members		42
Service Retirees		438
Disabilitants		6
Survivors		177
Deferred Retirees		0
Nonvested Former Members		--
Total Membership		663
<u>Funded Status</u>		
Accrued Liability		\$275,513,196
Current Assets		\$248,545,796
Unfunded Accrued Liability		\$26,967,400
Funding Ratio	90.21%	
<u>Financing Requirements</u>		
Covered Payroll		\$3,141,585
Benefits Payable		\$20,598,079
Normal Cost	21.07%	\$636,326
Administrative Expenses	0.00%	--
Normal Cost & Expense	21.07%	\$636,326
Normal Cost & Expense	21.07%	\$636,326
Amortization	71.82%	\$2,256,188
Total Requirements	92.89%	\$2,892,514
Employee Contributions	1.27%	\$39,852
Employer Contributions	62.07%	\$1,950,098
Employer Add'l Cont.	--	--
Direct State Funding	--	--
Other Govt. Funding	--	--
Administrative Assessment	--	--
Total Contributions	63.34%	\$1,989,950
Total Requirements	92.89%	\$2,892,514
Total Contributions	63.34%	\$1,989,950
Deficiency (Surplus)	29.55%	\$902,564

5. Extent of Minneapolis City Support for the Proposed Eligibility Expansion. The policy issue is the extent of support for the potential proposed special legislation for Roberta Espey Griffin by the City of Minneapolis. As special legislation, Document LCPR05-371 is only effective if it is approved by the City of Minneapolis. The responsibility for funding the proposed surviving spouse benefit extension will lie with the City of Minneapolis under Minnesota Statutes, Section 69.77, which already has numerous pension funding demands and burdens. If the City of Minneapolis has no interest in approving the potential legislation, it would be a poor expenditure of legislative time and energy to pursue the proposed expansion legislation. Representatives of the City of Minneapolis should be asked to testify on the proposal.
6. Precedent/Other Potential Claimants. The policy issue is the extent to which there is past legislative precedent for this type of potential proposed legislation, the number of other similar situated

individuals who could claim comparable special legislative changes, and the extent to which special legislation for Roberta Espey Griffin would be a binding precedent for those potential claimants. There appears to be three prior precedents related to the proposed eligibility expansion, two favorable and one unfavorable. The favorable precedents are Laws 1992, Chapter 422, where the former spouse of a retired St. Paul firefighter who resumed living with the firefighter for an extended period of time before the firefighter's death, but did not remarry the firefighter, was made eligible for a surviving spouse benefit from the St. Paul Fire Department Relief Association, and Laws 2000, Chapter 461, Article 17, Section 6, where the surviving spouse of a retired Minneapolis firefighter who was married to the retired firefighter for 4.75 years prior to death, when the duration requirement was five years, was made eligible for a surviving spouse benefit from the Minneapolis Firefighters Relief Association. The unfavorable precedent was 2003 Session S.F. 499 (Skoglund); H.F. 776 (Davnies), heard by the Commission without further action, where the surviving spouse married an active Minneapolis firefighter on the eve of retirement and the retired firefighter died one year after the marriage, not meeting the two-year duration requirement. That surviving spouse is likely to again pursue special legislation during the 2006 Session, even though the surviving spouse in that case was given special eligibility for an enhanced death refund during the 2003 Session (First Special Session Laws 2003, Chapter 12, Article 11, Sections 2 and 4) and has taken that death refund. It is unclear whether or not there are additional Minneapolis Firefighters Relief Association short duration marriage surviving spouses beyond Mrs. Griffin and the surviving spouse affected by 2003 Session S.F. 499 (Skoglund); H.F. 776 (Davnies), although the Minneapolis Firefighters Relief Association may be able to provide some estimate of that number as part of their testimony. For the potential recipient of a benefit affected by a future requested relaxation in eligibility requirements of any Minnesota retirement plan, a prior eligibility requirement relaxation for Minneapolis Firefighters Relief Association for equitable considerations will be deemed to be a favorable precedent. For the Legislature, however, the precedent value will depend on how closely the equitable considerations in the prior legislation match the equitable considerations in any subsequent proposals.

7. Appropriateness of General Law or Special Law Changes. The policy issue is whether special legislation or general legislation is the most appropriate response to the request by Roberta Espey Griffin. If the two readily known omitted Minneapolis Firefighters Relief Association surviving spouses both have sufficient equitable arguments for entitlement to surviving spouse benefits from the Minneapolis Firefighters Relief Association, then a general law change is likely to be the better legislative response than two special law enactments from a legislative time and management perspective, although a general law may sweep up additional, potentially less equitably qualified, surviving spouses. If the Legislature decides that two years duration for a marriage by a potential surviving spouse in a post-retirement marriage is not the optimal balance point between dissuading potential sham marriages to gain additional survivor benefits and not penalizing individuals with a justifiable expectation for survivor benefits, then a general law change to a shorter duration requirement is clearly preferable than a string of special law enactments. Status survivor benefits, such as the Minneapolis Firefighters Relief Association survivor benefit, where the benefit is granted upon the demonstration of the attainment of a particular status (i.e., spouse in this case), are premised on certain beliefs or conclusions about the implications of that status. In the case of surviving spouses, the status of spouse in an automatic survivor benefit situation presumes some extent of economic dependency (either personal or household) on the deceased public safety officer and a belief that some portion of that economic contribution should be replaced by the public sector in the event of the death of the public safety officer. Clearly, individuals other than surviving spouses and minor children can have economic dependency on a wage earner (i.e., parents, siblings, cohabitators, etc.) but those individuals generally are not accorded status benefit rights in public pension laws. Similarly, some spouses could be accorded status benefit rights without actually having any established pattern of economic dependency, which was the situation of some survivor benefit recipients of the Civil War-era military survivor pension system that underlay the novel by Allen Gurganus, The Oldest Confederate Widow Tells All. The potential for fraud in status survivor benefit programs is not wholly a product of a work of fiction, with American Heritage Magazine reporting in 1976 that \$528,000 was disbursed in that year by the federal government to 450 surviving Civil War beneficiaries, notwithstanding the death of the last Union Army veteran from the 1861-1865 Civil War in 1966 and of the last Confederate Civil War veteran in 1959. **Amendment LCPR05-372** would replace the potential special law provision for Roberta Espey Griffin with a general law provision, implementing a one-year duration requirement that would cover both known Minneapolis Firefighters Relief Association omitted surviving spouses, effective retroactively to September 25, 2001, the day before the earliest of the two retired Minneapolis firefighter deaths, but without retroactive payments for the period before the date of enactment, and with an offset for the value of any death refund previously taken.

Attachment A

Background Information on the Minneapolis Firefighters Relief Association and MFRA Survivor Benefits

- a. Relief Association Establishment and Operation. The Minneapolis Firefighters Relief Association was established as an organization in 1868, initially to provide relief to disabled firefighters and to their families, when the Minneapolis Firefighters was a volunteer fire department, and was incorporated under Minnesota law in 1886, after the Minneapolis Fire Department became a paid fire department, in 1879. The Minneapolis Firefighters Relief Association began paying service pensions to retiring firefighters in 1897. Membership in the Minneapolis Firefighters Relief Association was closed to new firefighters as of June 15, 1980, when pension coverage for newly hired Minneapolis firefighters shifted to the statewide Public Employees Police and Fire Plan (PERA-P&F).

The Minneapolis Firefighters Relief Association is managed by a governing board of 12 members, of which two are active firefighters, eight are retired firefighters or surviving spouses, and two are appointed representatives of the City of Minneapolis. In addition to maintaining records and determining benefit amounts, the Minneapolis Firefighters Relief Association governing board is the investment authority for the assets of the special (pension) and general (non-pension) funds of the relief association.

In calendar year 2004, the Minneapolis Firefighters Relief Association received total contributions of almost \$2.2 million (98.1 percent from the State of Minnesota, 0.1 percent from the City of Minneapolis, and 1.8 percent from the members), received net investment income slightly under \$23.9 million, paid total retirement benefits of almost \$22.5 million, and paid administrative expenses slightly under \$600,000 (34 percent for personnel, 41 percent for professional services, and 25 percent for conferences, communications, office rent, and other items).

- b. Nature of the Benefit Plan; Benefit Coverage. The Minneapolis Firefighters Relief Association provides from its special fund a salary-related service pension to firefighters retiring at age 50 or older with at least five years of service, a disability benefit to temporarily or permanently disabled firefighters, a survivor benefit to the surviving family of a deceased active, retired, or disabled firefighter, and a return of contributions to the estate of deceased active, retired, or disabled firefighters on whose behalf no survivor benefit is payable. Pensions and benefits are based on the salary of a first grade firefighter, irrespective of the actual rank of the firefighter. Under Laws 1997, Chapter 233, Article 4, a joint-and-survivor optional annuity form can be elected in lieu of the automatic survivorship coverage otherwise provided by the fund.

Since 1990, the contributions by any member (eight percent of the pay of a first-grade firefighter) who has 25 or more years of service are not deposited in the special fund; but rather, the contribution is deposited in a health insurance account set up for the member. After retirement, in addition to the pension benefit paid from the association's special fund, the retiree receives distributions from the health insurance account, which the retiree can use toward health care costs or other expenses of the retiree.

When an a Minneapolis firefighter retires and begins drawing a service pension from the association's special fund, those benefits are eligible for increases annually through three different post-retirement increase mechanisms. Individually and as a package, these adjustment provisions are poorly designed and can produce increases which bear no relationship to inflation, and can produce erratic changes in the benefits over time.

1. Active Salary-Related Escalator. The first post-retirement adjustment is a standard escalator tied to increases in the salary of a first-grade firefighter. This escalator increases retirement benefits by the same percentage increase as the percentage increase in first-grade firefighter pay negotiated between the City and the Minneapolis Firefighters Union.
2. 13th Check Adjustment. A second increase provision is based on the investment performance of the special fund of the relief association, and is referred to as the 13th check post-retirement adjustment. The 13th check post-retirement adjustment was enacted in 1989.
3. Additional 13th Check Adjustment. A third post-retirement increase mechanism was added to law in 2000. If the funding ratio (percentage of plan pension liabilities covered by plan assets) of the relief association exceeds 110 percent, the association is authorized to distribute a portion of the funding in excess of 110 percent of its liabilities to its benefit recipients.

Additionally, from its general fund, the Minneapolis Firefighters Relief Association provides a \$1,200 lump sum death benefit to the survivors or estate of deceased active or former firefighters and a \$102 per year of service lump sum retirement benefit to a retiring firefighter.

Attachment A

- c. Survivor Benefit Coverage. The Minneapolis Firefighters Relief Association benefit plan offers two alternative benefit forms that may be used to provide continuing income to a survivor after the death of the firefighter. The first of these is automatic survivor coverage, currently provided under Minnesota Statutes, Section 423C.05, Subdivision 7. Automatic survivor coverage has been a part of this plan for many decades. Currently, that automatic coverage provides a 22-unit survivor benefit (52.4 percent of the benefit received by the retired firefighter immediately prior to the firefighter's death) if the surviving spouse qualifies as a "surviving spouse member." Joint-and-survivor annuity options were added to the plan in 1997, permitting a retiring firefighter to elect a 50 percent, or 75 percent, or 100 percent joint-and-survivor annuity. By electing the joint-and-survivor coverage the firefighter waives the automatic coverage that would otherwise apply. The joint and survivor optional annuity could be elected to cover the service pensioner's spouse or any other person.
- d. Surviving Spouse Eligibility. Under the definition of "surviving spouse member," Minnesota Statutes, Section 423C.01, Subdivision 25, a surviving spouse member is any spouse married to an active firefighter in death-while-active situations if death occurs prior to the firefighter terminating from service or retiring and if the ex-firefighter's death occurs after the individual terminates service with the department, the surviving spouse is a "surviving spouse member" if the marriage to the firefighter occurred at least one year prior to termination of service, according to the statement in statute. The definition of "surviving spouse member" appears to have been intended largely to delineate which benefit recipients are eligible to serve on the board of trustees of the relief association or to vote for board members, and not for benefit entitlement or eligibility.

The automatic surviving spouse coverage provision in statute also provides a benefit to surviving spouses who do not meet the definition of surviving spouse member under Minnesota Statutes, Section 423C.01, Subdivision 25, providing that a person is a surviving spouse if the person was legally married to the member and residing with the member for two years prior to the death of the retired firefighter. A surviving spouse in this latter category receives the same benefit as a surviving spouse of a deceased active member, which is a benefit equivalent to 52.4 percent of the benefit received by the retired firefighter immediately prior to the firefighter's death, except in cases where the surviving spouse on the date of the ex-firefighter's death is younger than the firefighter's age when the firefighter first started to receive the retirement annuity and the survivor benefit is downsized slightly to limit the lifetime value of the survivor benefit.

