

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1201
(Representatives Drovdal, Lloyd, Warner)
(Senators Bowman, Lyson, O'Connell)

AN ACT to create and enact a new subsection to section 18-10-06 of the North Dakota Century Code, relating to powers of rural fire protection districts; and to amend and reenact sections 18-04-07, 18-05-01, 18-05-02, 18-05-03, 18-05-04, 18-05-05, 18-05-06, 18-05-07, 18-05-08, 18-05-09, 18-05-10, 18-05-12, 18-05-13, 28-22-19, subsection 70 of section 40-05-01, 40-46-01, subsection 21 of section 57-15-10, section 57-15-43, and subdivision j of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to the organization of firefighters relief associations by fire departments and rural fire protection districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-07 of the North Dakota Century Code is amended and reenacted as follows:

18-04-07. Disbursement of fund by city auditor. Moneys received by the city auditor under the provisions of this chapter must be disbursed as follows:

1. In a city having a paid fire department, ~~such amount~~ the money must be placed in a fund to be disbursed by the governing body of the municipality in maintaining ~~such~~ the fire department. If the municipality has a duly organized and incorporated ~~firemen's~~ firefighters relief association, the ~~amount~~ money must be disbursed in accordance with section 18-05-04.
2. In a city or rural fire protection district having no paid fire department, ~~such amount~~ the money must be paid over to the treasurer of the fire department, or to the treasurer of each separately organized fire company ~~which~~ that satisfies the requirements of section 18-04-01 in equal proportions when there ~~are~~ is more than one in the municipality or rural fire protection district, upon the written order of ~~such~~ the department or companies approved by the governing body of the municipality or rural fire protection district. If the municipality or rural fire protection district has a duly organized and incorporated firefighters relief association, the amount must be disbursed in accordance with section 18-05-04.
3. For the purpose of this section, a nonpaid or volunteer fire department is any department ~~where in which~~ less than fifty percent of the personnel of ~~said~~ the department are full-time regularly salaried firefighters. A volunteer firefighter is a firefighter who does not receive a regular monthly salary though the firefighter may receive compensation for each fire call the firefighter responds to.

SECTION 2. AMENDMENT. Section 18-05-01 of the North Dakota Century Code is amended and reenacted as follows:

18-05-01. Firemen's Firefighters relief association - Where it may be organized. A ~~firemen's~~ firefighters relief association may be organized in any city ~~which~~ or rural fire protection district ~~that~~ has a ~~paid~~ fire department. In organizing ~~such~~ a firefighters relief association, the procedure provided in chapter 10-33 must be followed.

SECTION 3. AMENDMENT. Section 18-05-02 of the North Dakota Century Code is amended and reenacted as follows:

18-05-02. Control of funds - Derivation of funds. Through its board of trustees and officers, a ~~firemen's~~ firefighters relief association ~~shall have~~ has full charge, management, and control of the funds provided for in this chapter, which funds must be derived from the following sources:

1. From interest, rents, gifts, or money from other sources; and
2. From funds received from the state ~~of North Dakota~~.

SECTION 4. AMENDMENT. Section 18-05-03 of the North Dakota Century Code is amended and reenacted as follows:

18-05-03. Treasurer of relief association to furnish bond. Before entering upon the duties of office, the treasurer of every ~~firemen's~~ firefighters relief association shall give a good and sufficient bond to the association conditioned for the faithful discharge of the duties of ~~the office~~ treasurer, and for the safekeeping and paying over, according to law, of all moneys ~~which~~ that come into the ~~person's~~ treasurer's hands ~~as such~~ while acting as treasurer.

SECTION 5. AMENDMENT. Section 18-05-04 of the North Dakota Century Code is amended and reenacted as follows:

18-05-04. Apportioning insurance tax received by city or rural fire protection district. ~~The amount received under section 18-04-05 by the city auditor in a city having or the treasurer of a rural fire protection district with a paid fire department and a duly organized and incorporated firemen's firefighters relief association except as hereinafter provided must be apportioned as follows: shall apportion the amount received under section 18-04-05, so one-half thereof must be of the amount is placed in a fund to be disbursed by the city's or rural fire protection district's governing body in maintaining the fire department; and one-half thereof must be is paid to the treasurer of the firemen's firefighters relief association. Instead of making such apportionment Except, the city's governing body in its discretion may direct the city auditor or the rural fire protection district's board of directors may direct the treasurer to pay all or any portion of the one-half of the amount so received which would otherwise be disbursed in maintaining the fire department to the treasurer of the firemen's firefighters relief association if its financial condition makes such the disposition necessary or advisable.~~

SECTION 6. AMENDMENT. Section 18-05-05 of the North Dakota Century Code is amended and reenacted as follows:

18-05-05. Disbursement of money received by treasurer of firemen's firefighters relief association. The amount received by the treasurer of a ~~firemen's~~ firefighters relief association from ~~this the~~ state may be disbursed for the following purposes only:

1. For the maintenance of the association.
2. For pensions to and the relief of sick, injured, and disabled members of any fire department in the municipality or the rural fire protection district and ~~their widows and orphans~~ the members' surviving spouses and children.
3. For the payment of service pensions as provided in section 18-05-06 in ~~such the~~ such amounts and ~~in such manner as~~ the association designates in its articles of incorporation and bylaws.

SECTION 7. AMENDMENT. Section 18-05-06 of the North Dakota Century Code is amended and reenacted as follows:

18-05-06. Service pension - Who may receive - Recipient entitled to no further relief from association.

1. A ~~firemen's~~ firefighters relief association organized under the laws of this state may pay out of any funds received from the state, city, municipality, or ~~from~~ any other source a service pension in ~~such an~~ such amount; not exceeding two hundred dollars per month, as may be provided by ~~its~~ the association's bylaws, to each of its members who has retired and who:

- 1- a. Has reached the age of fifty years;
 - 2- b. Has done active duty for twenty years or more as a member of a ~~volunteer, paid, or partially paid and partially volunteer~~, fire department in the municipality or rural fire protection district in which ~~such~~ the association exists;
 - 3- c. Has been a member of the ~~firemen's~~ firefighters relief association for at least ten years ~~prior to~~ before the date of ~~the person's~~ retirement; and
 - 4- d. Complies with any additional conditions as to age, service, and membership ~~which~~ that may be prescribed by the bylaws of the association.
2. ~~No~~ A pension may not be paid to any ~~person~~ individual while ~~the person~~ that individual remains a member of the fire department or rural fire protection district, and a ~~person~~ an individual who is receiving a service pension is entitled to no other relief from the association. An individual who becomes a member of a firefighters relief association at the time of the formation of the association and who meets all of the requirements of subsection 1, except subdivision c relating to vesting, may receive a retirement benefit under this section if the benefit is actuarially reduced to account for the decreased period of contribution to the fund.

SECTION 8. AMENDMENT. Section 18-05-07 of the North Dakota Century Code is amended and reenacted as follows:

18-05-07. Eligibility for service pension may be acquired by paying back assessments. ~~Any~~ A firefighter who, for the number of years required for retirement, actually has served in a fire department in a municipality or rural fire protection district in which a ~~firemen's~~ firefighters relief association has been organized and who pays into the ~~firemen's~~ firefighters relief and pension fund maintained in ~~such~~ the municipality assessments equal to the amounts assessed against the members of the association during the time of the ~~person's~~ firefighter's service in the department, with interest upon ~~such~~ the assessments, must be allowed membership in the association and ~~shall~~ is entitled to receive, upon retirement, the same pension from the fund as is paid to other firefighters. The bylaws of an association may not contain any provision ~~which~~ that discriminates against a firefighter who actually has worked as ~~such~~ a firefighter during the number of years required by the bylaws or which prevents the ~~person~~ firefighter from, or discriminates against the ~~person~~ firefighter in, participating in the association or in the benefits from the fund. The rights provided for in this chapter are acquired by compliance with this section whether ~~such~~ compliance was accomplished ~~prior before~~ after July 1, 1935, without regard to the time when the required service was performed.

SECTION 9. AMENDMENT. Section 18-05-08 of the North Dakota Century Code is amended and reenacted as follows:

18-05-08. Pensions to be uniform - Reduction or increase in pensions authorized. All pensions granted in a municipality or rural fire protection district under the provisions of this chapter must be uniform in amount. Every association, however, ~~shall have the right at all times to~~ may reduce or increase the amount of pensions, within the limitations contained in this chapter, whenever the amount of funds on hand or other good reason renders such action advisable.

SECTION 10. AMENDMENT. Section 18-05-09 of the North Dakota Century Code is amended and reenacted as follows:

18-05-09. Who deemed firefighter. ~~No~~ A substitute firefighter, ~~no~~ a person serving on probation, and ~~no~~ a firefighter in a municipality or rural fire protection district having a relief association in its fire department who is not a member of ~~such~~ the association may not be deemed a firefighter within the meaning of this chapter.

SECTION 11. AMENDMENT. Section 18-05-10 of the North Dakota Century Code is amended and reenacted as follows:

18-05-10. Qualifications as to age and term of service inapplicable to pension for disability. The qualifications as to age and term of service prescribed by this chapter do not apply to a

member of a fire department who makes an application for a pension on account of injuries or disabilities ~~which make the person that result in the firefighter being unfit for to perform~~ the duties of an active firefighter. The relief association shall pay the pension to ~~such those~~ members, or to the ~~widow or orphans~~ surviving spouse or children of a deceased firefighter, in ~~such the~~ amounts and under ~~such the~~ limitations and conditions as its articles of incorporation and bylaws provide and permit. ~~No A~~ pension paid to any one family, however, may not exceed the maximum monthly service pension permitted under this chapter.

SECTION 12. AMENDMENT. Section 18-05-12 of the North Dakota Century Code is amended and reenacted as follows:

18-05-12. Secretary and treasurer of firemen's firefighters relief association to prepare report - Contents - Filing. The secretary and treasurer of every ~~firemen's~~ firefighters relief association shall prepare annually a report of all the receipts and expenditures of the association for the previous year showing the source of all receipts and for what purpose and to whom any money was paid and expended. ~~Such~~ The report must be filed in the office of the city auditor of the municipality wherein the association is situated or in the case of a rural fire protection district the office of the county auditor of the county in which the rural fire protection district is located, and a duplicate of the report must be filed with the office of management and budget before any money may be paid to ~~any such the~~ relief association.

SECTION 13. AMENDMENT. Section 18-05-13 of the North Dakota Century Code is amended and reenacted as follows:

18-05-13. Audit of books of relief association - Report of unauthorized spending to governor - Duty of governor. The books and accounts of the secretary and treasurer of each ~~firemen's~~ firefighters relief association receiving funds under the provisions of this chapter must be audited as required by section 54-10-14. If the money, or any part of it, has been or is being expended for unauthorized purposes, the facts must be reported to the governor. Thereupon, the governor shall direct the office of management and budget not to prepare any warrants for the benefits of the fire department or relief association of the municipality in which ~~such the~~ the association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

SECTION 14. A new subsection to section 18-10-06 of the North Dakota Century Code is created and enacted as follows:

To establish a firefighters relief association under chapter 18-05.

SECTION 15. AMENDMENT. Section 28-22-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6, a state agency, a political subdivision of the state, or a ~~firemen's~~ firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 54-23.4 as compensation for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

SECTION 16. AMENDMENT. Subsection 70 of section 40-05-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

70. Employee pension system. To adopt, by ordinance, a city employee pension system ~~which that~~ may provide all rules and regulations governing its operation and discontinuance, provided other pensions systems allowed by statute are not in effect, excepting ~~firemen's firefighters~~ relief associations and federal social security, or in order to consolidate existing pension plans. In addition to all other rules and regulations deemed necessary and proper by the governing body, it may provide as to matters pertaining to membership, tax levies in an amount not exceeding the total levies authorized by chapters 40-45 and 40-46, membership fees and assessments, management, investments, acceptance of money and property, retirement conditions and payment amount, continuance of system and discontinuance procedures, discontinuance payments, entrance into contracts with an insurance firm or firms for coverage of ~~such the~~ employee pension system.

SECTION 17. AMENDMENT. Section 40-46-01 of the North Dakota Century Code is amended and reenacted as follows:

40-46-01. Adoption of employees' pension plan - Exclusion of police and members of firemen's firefighters relief associations. The provisions of this chapter ~~shall~~ become operative in any city qualified to adopt the same by:

1. The adoption by the governing body of the city of a plan substantially setting forth the provisions of this chapter; and
2. The concurrence in ~~such the~~ plan by the employees of the city by a majority vote thereof.

Thereafter, all employees of the city ~~shall be~~ are bound by the provisions of ~~such the~~ plan without further action by the governing body or by the employees of the city. For the purposes of this chapter, members of the police force of the city ~~shall are not be~~ considered employees of the city and members of a ~~firemen's firefighters~~ relief association ~~shall are not be~~ considered employees of the city, if by a majority vote of the members thereof, they exclude themselves.

SECTION 18. AMENDMENT. Subsection 21 of section 57-15-10 of the North Dakota Century Code is amended and reenacted as follows:

21. Taxes levied for an organized ~~firemen's firefighters~~ relief association in accordance with section 57-15-43 may be levied in an amount not exceeding one-half of one mill.

SECTION 19. AMENDMENT. Section 57-15-43 of the North Dakota Century Code is amended and reenacted as follows:

57-15-43. Tax levy for city having an organized firemen's firefighters relief association - Limitations - Disbursement. ~~Any~~ A city having an organized ~~firemen's firefighters~~ relief association as provided for under chapter 18-05; may levy an annual tax not exceeding the limitation in subsection 21 of section 57-15-10 for the purpose of assisting ~~such firemen's the firefighters~~ relief association in providing for the pension and relief provided for by ~~such the~~ association.

On the last day of June and December of each year, the auditor of ~~any a~~ city covered by this section shall deliver and turn over to the treasurer of ~~any such firemen's the firefighters~~ relief association, having qualified as provided for in chapter 18-05, all moneys collected under this section.

SECTION 20. AMENDMENT. Subdivision j of subsection 1 of section 57-38-01.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the ~~firemen's firefighters~~ relief associations authorized by chapters 18-05 and 18-11, policemen's pension funds authorized by chapter 40-45, or the highway patrolmen's retirement system authorized by chapter 39-03.1; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1201.

House Vote: Yeas 97 Nays 0 Absent 1

Senate Vote: Yeas 45 Nays 0 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State