

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1070

Introduced by

Representatives Grande, Ekstrom, Boehning

Senators Grindberg, Flakoll, Fischer

1 A BILL for an Act to create and enact a new section to chapter 18-11 of the North Dakota
2 Century Code, relating to alternate firefighters relief association plan benefits.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 18-11 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Service, disability, and survivor pensions - Formulation of optional plan.** With the
7 consent of the governing body of the city involved, and in substitution for a pension payment
8 schedule, disability pension provision, and survivor pension provision provided in sections
9 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt a
10 monthly service pension plan, disability pension for members, and pensions for survivors of
11 deceased members of the association as provided in this section.

12 1. Normal retirement date. Normal retirement date for a service pension is the first
13 day of the month coincident with or next following the member's attainment of age
14 fifty-five and the completion of ten years of service.

15 2. Service pensions. A member retiring on or after the member's retirement date is
16 entitled to receive a monthly benefit beginning following the member's actual
17 retirement and continuing for the member's lifetime as specified in subsection 7.
18 The benefit amount is equal to two and fifty hundredths percent of average final
19 compensation, times years of service, up to a maximum of seventy-five percent.

20 3. Termination benefits. If a member terminates the member's employment as a
21 firefighter, either voluntarily or by discharge, and is not eligible for any other
22 benefits, the member is entitled to the following:

23 a. Nonvested termination. If the member has less than ten years of credited
24 service upon termination, the member is entitled to a refund of the member's

1 accumulated contributions, payable in a single lump sum payment. Any
2 benefits already received by the member from the association must be
3 deducted from this payment. Upon return of the member's accumulated
4 contributions, all of the member's rights and benefits under the plan are
5 forfeited and terminated. Upon any reemployment, a firefighter may not
6 receive credit for years or completed months of service for which the
7 firefighter has withdrawn the firefighter's accumulated contributions from the
8 plan, unless the firefighter repays into the plan the contributions the firefighter
9 has withdrawn, with interest, as determined by the board, within ninety days
10 after the firefighter's reemployment. A member may voluntarily leave the
11 member's accumulated contributions in the plan for a period of five years after
12 leaving the employ of the department pending the possibility of being
13 reemployed as a firefighter, without losing credit for the time that the member
14 was a member of the plan. If a member who is not vested is not reemployed
15 as a firefighter with the department within five years, the member's
16 accumulated contributions must be returned. During this period, the member
17 is not entitled to any benefits under subsection 4 or 5.

- 18 b. Vested termination. If the member has ten or more years of service upon
19 termination, the member is entitled to a monthly retirement benefit,
20 determined in the same manner as a service pension, and based upon the
21 member's service and the applicable pay in effect at the time of termination.
22 The monthly benefit amount commences upon application by the member, at
23 the member's age fifty-five. Alternatively, upon the member's request, the
24 member's accumulated contributions must be returned to the member.
25 Following payment under such election, neither the member nor the member's
26 beneficiaries or estate is entitled to any future benefit payments from the fund.

27 4. Disability pensions.

- 28 a. Eligibility. An active member who becomes disabled, and is not yet eligible to
29 begin payments under a service pension, is eligible to receive a disability
30 pension. A service or deferred pensioner who becomes disabled, which
31 disability arose from or is attributable to service on the fire department, and

1 who has ceased to be an active member of the association for five years or
2 less is eligible to receive a disability pension.

3 b. The disability benefit is determined as follows:

4 (1) Benefit amount. The monthly benefit under the disability pension
5 equals a percentage of the monthly salary of a top paid firefighter for
6 the year that the first benefit is paid, reduced as described below. The
7 percentage equals ten percent times the member's years of credited
8 service, up to a maximum of fifty percent. If the member is eligible for a
9 service pension, the member's monthly benefit equals the greater of the
10 disability pension or the service pension. If the member is eligible for a
11 deferred pension, the member will receive the disability pension through
12 the member's normal retirement age, and then is entitled to receive the
13 greater of the disability pension or the member's service pension
14 amount.

15 (2) Adjusted for other income. The disability pension amount must be
16 reduced by one dollar for every "excess dollar". "Excess dollar" is the
17 sum of earned income plus payments by the association, plus other
18 insurance payments, less the salary of a top paid firefighter on January
19 thirty-first of the year that the excess dollar amount is determined. This
20 reduction must be redetermined each year. For purposes of this
21 provision, earned income is all income reported or reportable for federal
22 income tax purposes, excluding passive income, but including wages,
23 salary, commissions, and similar pay from any gainful work, including
24 partnership profits when applicable. For purposes of this provision,
25 passive income is interest, rent, receipts, inheritance payments, private
26 disability insurance, or other payments not related to wages. Other
27 insurance payments received by a disabled member of the association
28 for disability must be included in the excess dollar calculation without
29 any reduction for taxes or other miscellaneous payments. For purposes
30 of this provision, insurance includes disability benefits under workers'
31 compensation or similar legislation, as well as primary and dependent

1 disability benefits provided under social security. Any lump sum
2 payment attributable to wages or insurance payments received by the
3 member will be prorated over the period of time for which the payment
4 is intended to provide benefits.

5 c. Determination of benefit amount by board. Every disabled member of the
6 association who disagrees with the findings of the association with regard to
7 the benefit calculation may have the calculation determined by an
8 independent third party in an arbitration process, the results of which are final.
9 The association has the right and responsibility to all active members to
10 determine the excess dollar calculation for each disabled member of the
11 association. Any attempt to fraudulently receive benefits under this section by
12 misrepresenting physical condition or withholding information affecting benefit
13 payments may be cause for dismissal from the association and immediate
14 suspension of all benefit payments, current or future.

15 d. Application for benefit. All applications for pensions must be made on forms
16 furnished by the association. Applicants shall answer all questions under oath
17 and furnish such evidence as the board requests. Should any doubt arise in
18 regard to the existence of disability, the matter must be referred to three
19 physicians, one to be chosen by the applicant, one to be chosen by the board,
20 and the two physicians so selected shall choose a third physician. In such
21 case, the three physicians thus chosen shall examine the applicant and report
22 to the board.

23 5. Optional forms of payment.

24 a. Normal form of benefit. For a member married at retirement, the normal form
25 of payment of the service pension or deferred vested pension is a monthly
26 payment for the member's lifetime, with fifty percent of this amount payable to
27 the member's surviving spouse. For a member who is not married at
28 retirement, the normal form of payment is a monthly payment for the
29 member's lifetime, with no survivor payments, but actuarially adjusted as
30 described in subdivision b as if the member were married to a spouse of the
31 same age.

1 b. Optional forms of benefits. In place of the normal form of benefit provided in
2 subdivision a, a member may elect to receive an actuarially equivalent benefit,
3 based on the factors provided in subsection 8, in one of the following optional
4 forms of payment:

5 (1) Life annuity. A monthly benefit payable for the member's lifetime only,
6 with no survivor benefits payable.

7 (2) Certain and life annuity. A monthly benefit payable for the member's
8 lifetime, but with one hundred twenty payments guaranteed. If the
9 member dies before receiving one hundred twenty payments, monthly
10 payments will be made to the member's designated beneficiary or
11 estate until one hundred twenty payments have been paid.

12 (3) Joint and survivor annuity. A monthly benefit payable for the member's
13 life, plus payments equal to seventy-five percent or one hundred
14 percent of this benefit amount to the member's spouse following the
15 member's death. Under this option, the surviving spouse is the
16 member's spouse at the time of retirement. If the spouse dies before
17 the member, no benefits will be paid to a survivor following the
18 member's death.

19 c. Benefit selection. A member may select one of the optional forms of payment
20 in subdivision b during the ninety days prior to the member's actual
21 retirement, or upon attaining normal retirement age, on a form provided by the
22 board. The selection may be changed at any time before cashing or
23 depositing the first retirement payment. Consent of the member's spouse is
24 not required to select or change an optional benefit form. A member may
25 change the beneficiary designated under the certain and life payment form at
26 any time prior to the member's death by filing a new selection form with the
27 board. The beneficiary's consent is not required. If a member dies after
28 having completed and filed a selection form with the board, but before actually
29 retiring, the board shall direct that payments be made as if the member had
30 retired on the member's date of death, and had selected the optional payment
31 indicated in the member's form. If a member dies after reaching normal

1 retirement age without having completed a selection form, the board shall
2 direct that payments be made as if the member had retired on the member's
3 date of death, and had selected the joint and one hundred percent survivor
4 optional payment form if the member was married on the member's date of
5 death, or the certain and life form if the member was not married. If the
6 member's spouse dies after the member has filed forms with the board
7 selecting a joint and survivor benefit form, but before cashing or depositing
8 the first retirement payment, and if the member does not file a revised
9 selection form, the board shall direct that payments be made under
10 subdivision a, providing for payments to a member who is not married at
11 retirement.

12 6. Preretirement death benefits.

- 13 a. Surviving spouse benefits. If a vested active or vested deferred member dies
14 before retirement, a pension in the sum of fifty percent of the amount of the
15 disability pension, or if greater, fifty percent of the deferred vested pension,
16 the member would have been entitled to on the date of death must be paid to
17 the surviving spouse for the period of the spouse's natural life.
- 18 b. Children's benefit. If a vested active or vested deferred member dies before
19 retirement, a monthly benefit must be paid to the member's surviving children
20 until age eighteen, or until completion of high school, if the children are
21 actively enrolled beyond age eighteen. The benefit amount to be shared
22 among the children is equal to a percentage of the top paid firefighter's
23 monthly salary on January thirty-first of the year the benefit is paid. The
24 percentage is determined based on the number of children at the time of each
25 benefit payment and whether the children's parent is alive. If the children's
26 surviving parent is alive, the percentage is twenty percent. If no parent
27 survives, and there is more than one child, the percentage is sixty percent. If
28 there is no parent and only one child, the percentage is forty percent.
29 Children who were living while the deceased was on the payroll of the
30 department, or who were born within nine months after the decedent was
31 withdrawn from the payroll of the department, are eligible for this benefit.

1 c. Minimum benefit. When an active member who is not yet vested dies, the
2 member's beneficiaries designated on forms provided by the pension
3 association or the member's estate, in case this form has not been filed with
4 the association, or in case the designated beneficiaries do not exist or cannot
5 be found within six months of the date of death, shall receive in addition to the
6 funeral benefit, a sum equal to what the member has contributed to the
7 association, less the amount of any benefits received by the active member or
8 the member's beneficiaries or estate.

9 7. Commencement of benefits.

10 a. Payment of benefits. Monthly benefit payments must be distributed on the
11 last day of each month. For service or deferred pensions, the first payment
12 must be prorated to equal the total monthly benefit earned, times the number
13 of days in the month following actual retirement, divided by the total number of
14 days in the month. Benefits payable to the surviving beneficiary of a retired
15 member who had been receiving payments commence in the month following
16 the retired member's death. Benefits payable to the surviving spouse or
17 children of a member who dies before retirement must be similarly prorated
18 based on the date of death of the active or deferred member. The final
19 monthly benefit paid in the month a retired member dies, a surviving
20 beneficiary dies, or a surviving beneficiary ceases to be eligible for benefits
21 must be paid on the last day of the month of death or termination of eligibility
22 and must equal a full monthly payment with no reduction or proration.

23 b. Mandatory commencement of benefits. Notwithstanding any provision in this
24 section to the contrary, benefits payable under the plan are subject to the
25 following:

26 (1) A member's benefits may not commence later than April first of the
27 calendar year following the later of the calendar year in which the
28 member attains age seventy and one-half and the calendar year in
29 which the member terminates employment. If a lump sum death benefit
30 is payable to a deceased member's beneficiary, the benefit must be
31 paid no later than sixty days following the member's date of death.

(2) The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.

(3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rules do not apply to any portion of the member's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

8. Actuarial equivalence - Optional forms of benefit. To determine the amount of the monthly payment under the life-only and certain and life optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors:

Life-only benefit: 1.043

Certain and life benefit: 1.030

To determine the amount of the monthly payment under the alternative joint and survivor optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors based on the difference in age between the member and the member's spouse, using the member's and spouse's ages as of the member's and spouse's most recent birthdays.

If the member is the same age as the spouse, use the following factors:

Joint and seventy-five percent survivor: 0.980

1	<u>Joint and one hundred percent survivor: 0.960</u>					
2	<u>If the spouse is not the same age as the member, use the following factors:</u>					
3	<u>If the</u>			<u>If the</u>		
4	<u>Spouse Is</u>			<u>Spouse Is</u>		
5	<u>Younger:</u>	<u>Joint and</u>	<u>Joint and</u>	<u>Older:</u>	<u>Joint and</u>	<u>Joint and</u>
6	<u>Age</u>	<u>Survivor</u>	<u>Survivor</u>	<u>Age</u>	<u>Survivor</u>	<u>Survivor</u>
7	<u>Difference</u>	<u>75%</u>	<u>100%</u>	<u>Difference</u>	<u>75%</u>	<u>100%</u>
8	<u>1</u>	<u>0.979</u>	<u>0.959</u>	<u>1</u>	<u>0.980</u>	<u>0.960</u>
9	<u>2</u>	<u>0.978</u>	<u>0.957</u>	<u>2</u>	<u>0.981</u>	<u>0.962</u>
10	<u>3</u>	<u>0.977</u>	<u>0.956</u>	<u>3</u>	<u>0.981</u>	<u>0.964</u>
11	<u>4</u>	<u>0.976</u>	<u>0.954</u>	<u>4</u>	<u>0.982</u>	<u>0.965</u>
12	<u>5</u>	<u>0.976</u>	<u>0.952</u>	<u>5</u>	<u>0.983</u>	<u>0.967</u>
13	<u>6</u>	<u>0.975</u>	<u>0.951</u>	<u>6</u>	<u>0.984</u>	<u>0.969</u>
14	<u>7</u>	<u>0.974</u>	<u>0.949</u>	<u>7</u>	<u>0.985</u>	<u>0.970</u>
15	<u>8</u>	<u>0.973</u>	<u>0.948</u>	<u>8</u>	<u>0.986</u>	<u>0.972</u>
16	<u>9</u>	<u>0.973</u>	<u>0.947</u>	<u>9</u>	<u>0.986</u>	<u>0.973</u>
17	<u>10</u>	<u>0.972</u>	<u>0.945</u>	<u>10</u>	<u>0.987</u>	<u>0.975</u>
18	<u>11</u>	<u>0.971</u>	<u>0.944</u>	<u>11</u>	<u>0.988</u>	<u>0.976</u>
19	<u>12</u>	<u>0.971</u>	<u>0.943</u>	<u>12</u>	<u>0.989</u>	<u>0.978</u>
20	<u>13</u>	<u>0.970</u>	<u>0.942</u>	<u>13</u>	<u>0.989</u>	<u>0.979</u>
21	<u>14</u>	<u>0.969</u>	<u>0.940</u>	<u>14</u>	<u>0.990</u>	<u>0.980</u>
22	<u>15</u>	<u>0.969</u>	<u>0.939</u>	<u>15</u>	<u>0.991</u>	<u>0.982</u>