

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Grande

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 fire fighters 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 and Disability Pensions - Formulation of Optional Plan.** With the consent  
7 of the Governing body of the city involved, and a substitution for a pension payment schedule  
8 and disability pension provision provided in sections 18-11-15, 18-11-16, 18-11-17, and  
9 18-11-26, a firefighters relief association may adopt a monthly service pension plan and  
10 disability pension for members of the association as provided in this section.

11 1. Normal retirement date. Normal retirement date for a service pension is the first  
12 day of the month coincident with or next following the members of payment at age  
13 55 and the completion of ten years of service.

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

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

22 a. Non-\_\_\_\_\_ determination. If the member has less been ten years of  
23 credited service upon termination, the member is entitled to a refund of the  
24 members accumulated contributions, payable in a single lump sum payment.

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6           firefighter has withdrawn.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8           has withdrawn with interest, as determined by the board, within ninety days  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

17        b. Vested termination. If the member has ten or more years of service upon  
18           termination, the members is entitled to a monthly retirement benefit,  
19           determined in the same manner as a service pension based upon the  
20           members service and the applicable pay in effect at the time of termination.  
21           The monthly benefit amount commences upon application by the member, at  
22           the members age fifty-five. Alternatively, upon the members request, the  
23           members accumulated contributions must be returned to the member.  
24           Following payment under such election, neither the member or the members  
25           beneficiaries or estate is entitled to any future benefit payments from the fund.

26        3. Disability pensions.

27        a. Eligibility. An active member who becomes disabled, and is not yet eligible to  
28           begin payments under a service pension, is eligible to receive a disability  
29           pension. A service or deferred pensioner who becomes disabled, which  
30           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 members years of credited  
8               services, up to a maximum of fifty percent. If the member is eligible for  
9               a service pension, the members monthly benefit equal the greater of  
10              the disability pension or the service pension. If the member is eligible  
11              for a deferred pension, the member will receive the disability pension  
12              through the members normal retirement age, and then is entitled to  
13              receive the greater of the disability pension or the members service  
14              pension amount.

15          (2)   Adjusted further 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               31 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 for any gainful work including  
24               partnership profits when applicable. For purposes for this provision  
25               passive income is interest, rent, receipts, inheritance payments, private  
26               disability insurance, or other payment 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 independent

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

5            c.   Termination of benefit amount by board. Every disabled member of the  
6            association who disagrees with the finding 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, results which are final. The  
9            association has the right and responsibility to all active members to determine  
10           the excess dollar calculation for each disabled member of the association.  
11           Any attempt to fraudulently receive benefits under this section by  
12           misrepresenting physical condition or withholding information effecting 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           positions, one to be chosen by the applicant, one to be chosen by the board,  
20           and two positions so selected shall chose a third position, in such case, the  
21           three positions thus chosen examine the applicant and report to the board.

22           4.   Optional forms of payment.

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

1           b. Optional forms of benefits. In place of the normal form of benefit provided in  
2           section \_\_\_\_\_, a member may elect to receive an actuarially equivalent benefit,  
3           based on the factors provided in section \_\_\_\_\_, 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 his  
15           death. Under this option, the survivor spouse is the member's spouse  
16           at the time of retirement. If the spouse dies before the member, no  
17           benefits will be paid to a survivor following the member's death.

18           c. Benefit selection. A member may select one of the optional forms of payment  
19           in section \_\_\_\_\_ during the ninety days prior to their actual retirement, or upon  
20           attaining normal retirement age, on a form provided by the Board. The  
21           selection may be changed at any time before cashing or depositing the first  
22           retirement payment. Consent of the member's spouse is not required to  
23           select or change an optional benefit form. A member may change the  
24           beneficiary designated under the certain and life payment at any time prior to  
25           their death by filing a new selection form with the board. the beneficiary's  
26           consent is not required.

27           If a member dies after having completed and filed a selection form with  
28           the board, but before actually retiring, the board shall direct that  
29           payments be made as if the member had retired on their date of death,  
30           and has selected the optional payment indicated in their form. If a  
31           member dies after reaching normal retirement age without having

completed a selection form, the board shall direct they payments be made as if the member had retired on their date of death, and had selected the joint and one hundred percent survivor optional payment form if they were not married. If the member's spouse dies after the member has filed forms with thee board selecting a joint and survivor benefit form, but before cashing or depositing the first retirement payment, and if the member does not file a revised selection form, the board shall direct that payments be made under section \_\_\_\_, providing for payment to a member that is not married at retirement.

5. Preretirement death benefits.

a. Surviving spouse benefits.

(1) If a vested active or vested deferred member dies before retirement, a pension in the sum of fifty percent, of the among of the disability pension, or if greater, fifty percent of the deferred vested pension, the member would have been entitled to on the date of death shall be paid to the surviving spouse for the period of her natural life.

b. Children's benefit.

(1) If a vested active or vested deferred member dies before retirement, a monthly benefit shall be paid to the member's surviving children until their age eighteen, or until completion of high school, if they are actively enrolled beyond age eighteen. The benefit amount to be shared among the children, is equal to a percentage of the top paid firefighter's monthly salary on January 31 of the year the benefit is paid. The percentage is determined based on the number of children at the time of each benefit payment, and whether the children's parent is alive. If the children's surviving parent is alive, the percentage is twenty percent. If no parent survives, and there is more than one child, the percentage is sixty percent. If there is no parent and only one child, the percentage is forty percent. Children who were living while the deceased was on the payroll of the Fargo fire department, or who were

1                               born within nine months after said decedent was withdrawn from the  
2                               payroll of said fire department are eligible for this benefit.

3               c.   Minimum benefit.

4                   (1)   When an active member who is not yet vested dies, his beneficiary  
5                               designated on forms provided by the pension association or his estate,  
6                               is case such form has not been filed with the association ,or in case the  
7                               designated beneficiaries do not exist or cannot be found within six  
8                               months of the date of death, shall receive in addition to the funeral  
9                               benefit provided in section \_\_\_\_\_, a sum equal to what the member has  
10                              contributed to the association, less the amount of any benefits received  
11                              by said active member, his beneficiaries or estate.