CHAPTER 40-45
POLICE PENSIONS IN CITIES

40-45-01. Funding for police pension fund.

Any city having a population in excess of five thousand inhabitants according to the last official federal census and having an organized and paid police department may provide funding for the purpose of creating and maintaining a police pension fund from revenues derived from its general fund levy authority.

Any city having established by law a police retirement system based upon actuarial tables may provide funding for the police pension fund from revenues derived from its general fund levy authority.

40-45-02. Tax levy for pension fund if retirement system based upon actuarial tables is maintained.

Repealed by S.L. 2015, ch. 439, § 104.

40-45-03. Composition and membership.

The governing body of the city may adopt ordinances relating to the composition of and membership in police pension systems subject to the provisions of this chapter.

40-45-04. Acceptance of money, property, and rewards by the board - Limitations.

The board of trustees may take by gift, grant, devise, or bequest any money or real or personal property or other thing of value for the benefit of the police pension fund. All rewards in moneys, fees, gifts, or emoluments of every kind or nature that may be paid or given to any police department or to any member thereof, except when allowed to be retained or given to endow a medal or other permanent or competitive reward on account of extraordinary services rendered by the department or any member thereof, and all fines and penalties imposed upon members, shall be paid into and shall become a part of the pension fund.

40-45-05. Police pension fund - How established.

All moneys derived from taxes levied to create a police pension fund, all moneys received as membership fees and dues, and all moneys received from grants, donations, legacies, and devises for the benefit of such fund shall constitute a fund to be known and designated as the police pension fund.

40-45-06. Investment of surplus funds - Limitations.

At the end of the fiscal year, the board of trustees may invest any surplus left in the police pension fund, but no part of the moneys realized from any tax levy shall be used for any purpose other than the payment of pensions. Such surplus funds may be invested in interest-bearing bonds of the United States or the state of North Dakota, or bonds or warrants of any county, township, or municipal corporation of this state which constitute the general obligations or contingent general obligations of the issuing tax authority, or investments with any federally insured bank or savings and loan association. All securities shall be deposited with the treasurer of the board for safekeeping. The board may also invest all or part of such surplus funds in other investments by selecting a funding agent or agents and establish an investment agreement contract regarding such surplus funds. The contract shall authorize the funding agent or agents to hold and invest such funds for the board and such funds shall be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. The board of trustees may pay the fees and charges of said funding agent or agents from any surplus remaining in the police pension fund in excess of the moneys realized from any tax levy. The board of trustees may use a portion of the surplus left in the police pension fund in excess of moneys realized from any tax levy to pay the cost of actuarial studies of said pension system.

40-45-07. Tax levy may be discontinued when fund sufficient.

Whenever a city which has established a police pension fund under the provisions of this chapter has a sufficient balance in such fund to meet any proper and legitimate charges that may be made against it, such city shall not be required to levy further taxes for the fund.

40-45-08. Membership fees and assessments.

Every member of the police department shall pay to the treasurer of the pension fund a membership fee to be fixed by the board of trustees in an amount not exceeding twenty-five dollars. Each member shall be assessed and required to pay annually an amount not less than three percent or more than five percent per annum as determined by the governing body of the municipality upon the amount of the annual salary paid to the member. Such assessment shall be deducted and retained in equal monthly installments out of such salary. Assessments shall be made of all members for a minimum period of fifteen years for partial retirement and for twenty years and for such additional years as may be determined by the governing body for full retirement, as provided by section 40-45-09.

40-45-09. Who may be retired on pension - Amount paid to retiring member - Retiring member not paid.

Any member of the police department, including officers and police matrons, who shall have served twenty years or more in the department and shall have reached the age of sixty years, or who, while a member of such department shall suffer permanent mental or physical disability so that the person is unable to discharge the person's duties, shall be entitled to be retired. Upon retirement, the person may be paid out of the pension fund of the department a monthly pension equal to sixty percent of the average monthly salary received during the highest paid consecutive thirty-six-month period of the person's employment in the department. If any member shall have served twenty years in the department but shall not have reached the age of sixty years, the person shall be entitled to retirement, but no pension shall be paid while the person lives until the person reaches the age of sixty years, except as provided in section 40-45-11. Any member who has served one hundred eighty months but less than two hundred forty months, has contributed voluntarily to the police pension fund, and who voluntarily and while in good standing as a member has left employment of such city, shall be entitled to elect retirement instead of refund at a pension equal to the proportion of a full pension which the total number of months employed by the city bears to two hundred forty months, but no pension shall be paid while the person lives until the person reaches the age of sixty years. Notwithstanding the provisions of this section, upon the approval of the governing body of the municipality, and at the discretion of the board of trustees if it shall find that the actuarial soundness of the fund would not be materially impaired, any member otherwise qualifying in accordance with the provisions of this section may retire if the person has reached the age of fifty-five years.

40-45-10. Period of service spent in armed forces to be included as service in department.

Any member of a police department who has resigned therefrom or who shall resign therefrom, or who has been granted or shall be granted a leave of absence to serve in the armed forces of the United States or armed forces reserve thereof, or who shall have been selected for training under the selective service provisions of the laws of the United States and has returned with an honorable discharge from, or other document showing honorable service in, such service to the police department, shall have the period of such service included as part of the person's period of service in the department.

40-45-10.1. Purchase of legislative service credit.

A member of a police pension fund under this chapter may, prior to retirement, purchase for inclusion in the period of service in the department the time during each legislative session spent serving as a member of the legislative assembly while a member of the pension fund. The member shall pay for this service an amount equal to the required member assessments and employer contributions plus interest as established by the board of trustees. Service credit for

legislative sessions prior to July 1, 1985, must be purchased before January 1, 1986. Service credit for each later legislative session must be purchased within one year after the adjournment of that legislative session.

40-45-11. Eligibility for retirement because of disability.

No member of the police department who shall become unable mentally or physically to perform the person's duties, nor the person's dependents, shall be entitled to receive benefits under this chapter because of such disability unless such member shall have been on active duty with the department for a period of at least ten years prior to such disability unless such mental or physical impairment was received in the line of duty and permanently disabled such member. Provided, however, that any member of the department who shall have served twenty-two years, retired, and subsequently suffered a permanent disability prior to attaining age sixty, may, in the discretion of the pension board and providing that the same is actuarially sound, be eligible for disability retirement. The question of disability shall be determined by the board of trustees upon the concurring report of at least two out of three physicians designated by the board of trustees to make a complete physical examination of the member.

40-45-12. Assignment of retired members to light duties in police department.

The chief of the police department of the city may assign any member of the department, retired or drawing a pension under the provisions of this chapter, to the performance of light duties in such department.

40-45-13. Payments to surviving spouse, children, and surviving parents upon death of active or retired member.

Upon the death of any active or retired member of the police department of a city maintaining a police pension fund under this chapter, leaving a surviving spouse or minor children or dependent father or mother surviving the deceased member, there shall be paid out of the fund subject to the restrictions contained in section 40-45-14, as follows:

1. To the surviving spouse, as long as the surviving spouse remains unmarried, a sum not less than fifty dollars per month and not more than sixty percent of the deceased spouse's police retirement benefits.
2. If there is no surviving spouse, or upon the death or remarriage of the surviving spouse, then to the deceased member's dependent father or mother, if both survive, or to either dependent parent if one survives, the sum of forty dollars per month.
3. To the guardian of each surviving child under eighteen years of age, a sum not less than twenty-five dollars per month and not more than fifty dollars per month.

The aggregate of all such payments shall not exceed sixty percent of the average monthly salary received during the highest paid consecutive thirty-six-month period of the deceased member's employment prior to the time of the deceased member's death or retirement.

40-45-14. Definitions for benefit purposes.

The benefits provided for in section 40-45-13 shall be subject to the following definitions:

1. "Child" or "children" means only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to the deceased member's retirement from active service or by a retired member prior to July 1, 1937.
2. "Surviving spouse" means only the surviving spouse of a marriage contracted prior to retirement of a deceased member from active service or of a marriage of a retired member contracted prior to July 1, 1937.

40-45-15. Right to retirement once acquired cannot be lost.

After any member of a police department shall have become entitled to be retired under the provisions of this chapter, such right shall not be lost or forfeited by discharge or for any other reason.

40-45-16. Increase of assessments by city having police retirement system based upon actuarial tables.

If the mill levy provided for in section 40-45-01, together with contributions from beneficiaries and funds received from other sources as provided in this chapter, is inadequate or insufficient to establish a retirement system based upon actuarial tables, the governing body, in order to establish such system upon an actuarial basis, may increase the amount of the contributions from beneficiaries.

40-45-17. Reduction of retirement benefits by amount received from workmen's compensation fund.

Repealed by S.L. 1979, ch. 448, § 1.

40-45-18. Qualification under Social Security Act authorized - Reduction of retirement benefits.

In the event that the federal Social Security Act shall be extended by the Congress of the United States to municipal employees, the governing body of any municipality may take all steps necessary to qualify its employees, subject to the terms of this chapter, for benefits under the retirement provisions of the said Social Security Act. In such event, the benefits received under and by virtue of any retirement plan established under the provisions of this chapter shall be reduced by the benefits received under the federal Social Security Act.

40-45-19. Re-examination of retired member physically or mentally disabled - Notice - Witnesses.

The board of trustees, at any time, may cause any member of the department retired by reason of physical or mental disability to be brought before it and again examined by three competent physicians appointed by the board to discover whether such disability continues, whether it can be improved, and whether such retired member should be continued on the pension roll, and the board may examine witnesses for such purposes. The question of continued disability or ability to perform regular or light duty in the police department shall be determined by the concurring report of at least two of the three examining physicians. Such member shall have reasonable notice that the examination will be made and that the member shall be present at the time of the taking of any testimony. The member may examine the witnesses brought before the board and introduce evidence in the member's own behalf. All witnesses shall be examined under oath, which may be administered by any member of the board.

40-45-20. Decision on re-examination is final - Exception.

The decision of the board of trustees upon the re-examination provided for in section 40-45-19 shall be final and conclusive in the absence of fraud, and no appeal shall be allowed therefrom. The disabled member shall remain upon the pension roll unless and until reinstated in the department by reason of the re-examination.

40-45-21. Police department employees entitled to refund from fund upon termination of employment with city.

Any employee of a police department who shall have contributed to the police pension fund, and who voluntarily and while in good standing as a member of such police force leaves the employment of the city, shall be entitled upon application at the time of such termination to a refund of all contributions made by that person.

40-45-22. Warrants on pension fund - Treasurer's report - Contents.

All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the board of trustees. Such warrants shall designate the person to whom and the purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of the fund for the preceding fiscal year, the money on hand, and how the same is invested.

40-45-23. Pensions not subject to debts, execution, or other process.

Repealed by S.L. 1987, ch. 386, § 2.

40-45-24. Cities may provide hospitalization and nursing for police department - How cost paid - Exception.

Cities may provide hospital, nursing, and medical attention for the members of the police department when injured while in the performance of their duties as members of such department. The cost of such hospitalization, nursing, and medical attention shall be paid out of the appropriation for the department. Any amounts received by the injured person under the provisions of title 65 or from any other source for such specific purposes shall be deducted from the amount paid by the city under the provisions of this section.

40-45-25. Hours of duty of police officers in cities over ten thousand population - Limitations - Exceptions.

A police officer employed in the police department of a city having a population of ten thousand or more inhabitants shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of eight hours per day. No single period of time or shift shall exceed twenty-four hours in length except that in case of serious emergency, the police officer may be required to remain on duty until the emergency has passed, if the officer is ordered to do so by the chief of the department or the person acting in the chief's place. The provisions of this section shall not apply to the chief or other persons in command of a police department or to police officers who are employed subject to call only.

40-45-26. Question of continuance of police pension plan.

The governing body of a city having a police pension plan may discontinue such plan upon receipt of a petition requesting such discontinuance signed by sixty percent of the police employees and pensioners of the city as of the date of the filing of such petition and upon the subsequent adoption by the governing body of a resolution by two-thirds vote of the members present stating that the plan is not desirable or workable.

40-45-27. Procedure upon discontinuance of police pension plan.

If the governing body of the city shall determine by a two-thirds vote as provided in section 40-45-26 that the police pension plan shall be discontinued, the plan shall be discontinued as provided in section 40-46-25.

40-45-28. Pension cost of living increase.

In July of each year, the police pension board may add, if found actuarially sound, a cost of living increase to the monthly amounts paid beneficiaries from the pension fund. The total monthly pension payment under this section shall not exceed sixty percent of the monthly salary average during the preceding thirty-six months for the same or comparable position in the police department as held by the retiree in the retiree's last month before retirement.

40-45-29. Pension cost of living decrease.

The pensions provided in this chapter may be decreased by the police pension board if the cost of living goes down.