

# FIRES

## CHAPTER 166

### HOUSE BILL NO. 1056

(Legislative Management)  
(Taxation Committee)

AN ACT to amend and reenact section 18-10-07 of the North Dakota Century Code, relating to rural fire protection district increased levy approval; to repeal section 57-15-26.3 of the North Dakota Century Code, relating to the levy limit for rural fire protection districts; to provide for a legislative management study of the consolidation of elections and a legislative management study of statutory references to political subdivisions; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>126</sup> **SECTION 1. AMENDMENT.** Section 18-10-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **18-10-07. Fire protection policy to be determined - Tax levy.**

The board of directors shall determine a general fire protection policy for the district and shall annually estimate the probable expense for carrying out the contemplated program. The annual estimate of probable expense may include an amount determined by the board of directors to be necessary to be carried over to a future year for purchase of firefighting equipment, ambulances, or other emergency vehicles. The estimate must be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year, who shall levy a tax upon the taxable property within the district for the maintenance of the fire protection district for the fiscal year as provided by law.

The tax may not exceed the limitation in section 57-15-26.3a tax rate of five mills per dollar of the taxable valuation of property in the district, except upon resolution adopted by the board of directors and approval by a majority of the qualified electors voting on the question at an annual or special meeting of electors called by the board of directors, the levy may be made in an amount not exceeding thirteen mills. If an election to approve or reauthorize an excess levy will be held at an annual or special meeting of electors of the district called by the board of directors, notice of the meeting and the proposed excess levy election must be provided by at least one publication in the official newspaper of each county in which the district is located at least seven days, but not more than fourteen days, before the date of the public meeting. The published notice must include the amount of the proposed tax rate increase in mills and the duration for which elector approval of the increase is sought and must include the location where, and hours during which, ballots may be cast.

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<sup>126</sup> Section 18-10-07 was also amended by section 3 of House Bill No. 1059, chapter 433, section 21 of Senate Bill No. 2144, chapter 439, and section 12 of Senate Bill No. 2217, chapter 92.

Votes to approve or disapprove the levy increase must be cast on the date of the meeting. The polling place must remain open for at least six hours on the date of the meeting. The secretary-treasurer of the district shall prepare and distribute to qualified electors at the polling place paper ballots to conduct the election on the question of increased levy authority. Three election judges to receive and count the ballots, who are qualified electors of the district but not members of the board, must be selected at least seven days before the meeting by approval of a majority of the members of the board. A marked ballot must be delivered to one of the judges, folded to conceal its contents, the judge shall deposit it in the ballot box, and another judge shall enter the name of the elector who cast the ballot in the poll book. When the election is closed, the judges shall count the ballots and announce the result. Results of the election must be certified by the secretary-treasurer of the district and each of the election judges to the tax commissioner and to the county auditor of each county in which the district is located within ten days after the election. The certificate must include a statement of the question as it appeared on the ballot, together with the total number of votes cast in favor, and the number of votes cast against, authorizing the excess levy.

After July 31, 2015, approval or reauthorization by electors of increased levy authority under this section may not be effective for more than ten taxable years. No signature on the petition may be considered valid if made more than ninety days prior to receipt of the petition. Additional levy authority authorized by the board of directors after petition of electors before August 1, 2015, remains in effect under the provisions of law at the time the levy was authorized for the time period authorized by the electors but not exceeding five taxable years. The tax must be:

1. Collected as other taxes are collected in the county.
2. Turned over to the secretary-treasurer of the rural fire protection district, who shall have a surety bond in the amount of at least five thousand dollars.
3. Placed to the credit of the rural fire protection district so authorizing the same by its secretary-treasurer in a state or national bank, except amounts to be carried over to a future year for purchase of firefighting equipment, ambulances, or other emergency vehicles may be invested to earn the maximum return available.
4. Paid out upon warrants drawn upon the fund by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president of the rural fire protection district.

The amount of tax levy may not exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense, including the amount of principal and interest upon the indebtedness of the district for the ensuing year and including any amount determined by the board of directors to be necessary to be carried over to a future year for purchase of firefighting equipment, ambulances, or other emergency vehicles.

<sup>127</sup> **SECTION 2. REPEAL.** Section 57-15-26.3 of the North Dakota Century Code is repealed.

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<sup>127</sup> Section 57-15-26.3 was amended by section 20 of Senate Bill No. 2217, chapter 92, and was also repealed by section 104 of Senate Bill No. 2144, chapter 439.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY- CONSOLIDATION OF ELECTIONS.** During the 2015-16 interim, the legislative management shall consider studying the feasibility and desirability of consolidating all political subdivision and school district elections with the statewide primary election and the holding of all special elections on other specified dates during any year. If the legislative management conducts the study, the legislative management shall seek input and participation from the secretary of state; representatives of cities, counties, school districts, and other political subdivisions; and representatives of political parties. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - STATUTORY REFERENCES TO POLITICAL SUBDIVISIONS.** During the 2015-16 interim, the legislative management shall consider studying statutory usage of various references to political subdivisions and the feasibility of differentiating references to political subdivisions based on whether the governing body is elected or appointed. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014.

Approved April 27, 2015  
Filed April 27, 2015

## CHAPTER 167

### SENATE BILL NO. 2306

(Senators Nelson, Axness, Flakoll)  
(Representatives Beadle, Boehning, Schneider)

AN ACT to amend and reenact section 18-11-28 of the North Dakota Century Code, relating to alternate firefighters relief association plan benefits.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 18-11-28 of the North Dakota Century Code is amended and reenacted as follows:

#### **18-11-28. Service, disability, and survivor pensions - Formulation of optional plan.**

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

1. Normal retirement date. Normal retirement date for a service pension is the first day of the month coincident with or next following the member's attainment of age fifty-five and the completion of ten years of service.
2. Service pensions. A member retiring on or after the member's retirement date is entitled to receive a monthly benefit beginning following the member's actual retirement and continuing for the member's lifetime as specified in subsection 7. The benefit amount is equal to two and fifty hundredths percent of average final compensation, times years of service, up to a maximum of seventy-five percent.
3. Termination benefits. If a member terminates the member's employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits, the member is entitled to the following:
  - a. Nonvested termination. If the member has less than ten years of credited service upon termination, the member is entitled to a refund of the member's accumulated contributions, payable in a single lump sum payment. Any benefits already received by the member from the association must be deducted from this payment. Upon return of the member's accumulated contributions, all of the member's rights and benefits under the plan are forfeited and terminated. Upon any reemployment, a firefighter may not receive credit for years or completed months of service for which the firefighter has withdrawn the firefighter's accumulated contributions from the plan, unless the firefighter repays into the plan the contributions the firefighter has withdrawn, with interest, as determined by the board, within ninety days after the firefighter's reemployment. A member may voluntarily leave the member's

accumulated contributions in the plan for a period of five years after leaving the employ of the department pending the possibility of being reemployed as a firefighter, without losing credit for the time that the member was a member of the plan. If a member who is not vested is not reemployed as a firefighter with the department within five years, the member's accumulated contributions must be returned. During this period, the member is not entitled to any benefits under subsection 4 or 5.

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

#### 4. Disability pensions.

- a. Eligibility. An active member who becomes disabled, ~~and is not yet eligible to begin payments under a service pension, before the member's normal retirement date~~ is eligible to receive a disability pension. ~~A service or deferred pensioner who becomes disabled, which disability arose from or is attributable to service on the fire department, and who has ceased to be an active member of the association for five years or less is eligible to receive a disability pension.~~
- b. The disability benefit is determined as follows:

- (1) Benefit amount. The monthly benefit under the disability pension equals ~~a percentage of ten percent times the member's years of credited service, up to a maximum of fifty percent times the monthly salary of a top paid firefighter for the year that the first benefit is paid, reduced as described below in this paragraph. The percentage equals ten percent times the member's years of credited service, up to a maximum of fifty percent. If the member is eligible for a service pension~~ When a member eligible to receive a disability pension attains the member's normal retirement date, the member's monthly benefit equals the greater of the disability pension after adjustment for other income or the service pension. If the member is eligible for a deferred pension, the member will receive the disability pension through the member's normal retirement age, and then is entitled to receive the greater of the disability pension or the member's service pension amount ~~If the service pension is greater, the disability benefit must cease and the member must be treated in all respects as a service pensioner.~~
- (2) Adjusted for other income before age sixty-five. The disability pension amount must be reduced by one dollar for every "excess dollar". "Excess dollar" is the sum of earned income plus payments by the association, plus other insurance payments, less the salary of a top paid firefighter on January thirty-first of the year that the excess dollar amount is determined. This reduction must be redetermined each year.

For purposes of this provision, earned income is all income reported or reportable for federal income tax purposes, excluding passive income, but including wages, salary, commissions, and similar pay from any gainful work, including partnership profits when applicable. For purposes of this provision, passive income is interest, rent, receipts, inheritance payments, private disability insurance, or other payments not related to wages. Other insurance payments received by a disabled member of the association for disability must be included in the excess dollar calculation without any reduction for taxes or other miscellaneous payments. For purposes of this provision, insurance includes disability benefits provided by the city or under workers' compensation or similar legislation, as well as primary and dependent disability benefits provided under social security. Any lump sum payment attributable to wages or insurance payments received by the member will be prorated over the period of time for which the payment is intended to provide benefits.

- (3) Adjustment for other income ceases after age sixty-five. The "excess dollar" becomes zero and the association no longer has the right nor the responsibility to determine the excess dollar calculation for that disabled member of the association.
- c. Determination of benefit amount by board. Every disabled member of the association who disagrees with the findings of the association with regard to the benefit calculation may have the calculation determined by an independent third party in an arbitration process, the results of which are final. The association has the right and responsibility to all active members to determine the excess dollar calculation for each disabled member of the association. Any attempt to fraudulently receive benefits under this section by misrepresenting a physical condition or withholding information affecting benefit payments may be cause for dismissal from the association and immediate suspension of all benefit payments, current or future.
- d. Application for benefit. All applications for pensions must be made on forms furnished by the association. Applicants shall answer all questions under oath and furnish such evidence as the board requests. Should any doubt arise in regard to the existence of disability, the matter must be referred to three physicians, one to be chosen by the applicant, one to be chosen by the board, and the two physicians so selected shall choose a third physician. In such case, the three physicians thus chosen shall examine the applicant and report to the board.
- e. Suspension of disability pension pending proof of income. A disabled member shall provide proof of earned income to the association by April fifteenth each year. The proof provided must be in the form of earned income reported to the internal revenue service. If a disabled member is unable to provide proof of earned income by April fifteenth each year, the excess dollar amount is presumed sufficient to reduce the disability pension to zero dollars until the association receives adequate information to accurately determine the excess dollar amount. The association shall pay a disabled member the disability pension amount that was suspended, up to twelve months, in one lump sum once earned income information is received and the association accurately determines the amount owed to the disabled member.

## 5. Optional forms of payment.

- a. Normal form of benefit. For a member married at retirement, the normal form of payment of the service pension or deferred vested pension is a monthly payment for the member's lifetime, with fifty percent of this amount payable to the member's surviving spouse. For a member who is not married at retirement, the normal form of payment is a monthly payment for the member's lifetime, with no survivor payments, but actuarially adjusted as described in subdivision b as if the member were married to a spouse of the same age.
- b. Optional forms of benefits. In place of the normal form of benefit provided in subdivision a, a member may elect to receive an actuarially equivalent benefit, based on the factors provided in subsection 8, in one of the following optional forms of payment:
  - (1) Life annuity. A monthly benefit payable for the member's lifetime only, with no survivor benefits payable.
  - (2) Certain and life annuity. A monthly benefit payable for the member's lifetime, but with one hundred twenty payments guaranteed. If the member dies before receiving one hundred twenty payments, monthly payments will be made to the member's designated beneficiary or estate until one hundred twenty payments have been paid.
  - (3) Joint and survivor annuity. A monthly benefit payable for the member's life, plus payments equal to seventy-five percent or one hundred percent of this benefit amount to the member's spouse following the member's death. Under this option, the surviving spouse is the member's spouse at the time of retirement. If the spouse dies before the member, no benefits will be paid to a survivor following the member's death.
- c. Benefit selection. A member may select one of the optional forms of payment in subdivision b during the ninety days prior to the member's actual retirement, or upon attaining normal retirement age, on a form provided by the board. The selection may be changed at any time before cashing or depositing the first retirement payment. Consent of the member's spouse is not required to select or change an optional benefit form. A member may change the beneficiary designated under the certain and life payment form at any time prior to the member's death by filing a new selection form with the board. The beneficiary's consent is not required. If a member dies after having completed and filed a selection form with the board, but before actually retiring, the board shall direct that payments be made as if the member had retired on the member's date of death and had selected the optional payment indicated in the member's form. If a member dies after reaching normal retirement age without having completed a selection form, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the joint and one hundred percent survivor optional payment form if the member was married on the member's date of death, or the certain and life form if the member was not married. If the member's spouse dies after the member has filed forms with the 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 subdivision a, providing for payments to a member who is not married at retirement.

6. Preretirement death benefits.

- a. Surviving spouse benefits. If a vested active or vested deferred member dies before retirement, a pension in the sum of fifty percent of the amount 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 must be paid to the surviving spouse for the period of the spouse's natural life.
- b. Children's benefit. If a vested active or vested deferred member dies before retirement, a monthly benefit must be paid to the member's surviving children until age ~~eighteen~~nineteen, or until completion of high school, if the children are actively enrolled beyond age eighteenwhichever occurs first. The benefit amount to be shared among the children is equal to a percentage of the top paid firefighter's monthly salary on January thirty-first 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 department, or who were born within nine months after the decedent was withdrawn from the payroll of the department, are eligible for this benefit.
- c. Minimum benefit. When an active member who is not yet vested dies, the member's beneficiaries designated on forms provided by the pension association or the member's estate, in case this form has not been filed with the association, or in case the designated beneficiaries do not exist or cannot be found within six months of the date of death, shall receive in addition to the funeral benefit, a sum equal to what the member has contributed to the association, less the amount of any benefits received by the active member or the member's beneficiaries or estate.

7. Commencement of benefits.

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

- b. Mandatory commencement of benefits. Notwithstanding any provision in this section to the contrary, benefits payable under the plan are subject to the following:
- (1) A member's benefits may not commence later than April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half and the calendar year in which the member terminates employment. If a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be 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

Joint and one hundred percent survivor: 0.960

If the spouse is not the same age as the member, use the following factors:

and	If the Spouse Is Younger:	Joint and Survivor	Joint and Survivor	If the Spouse Is Older:	Joint and Survivor	Joint
	Age Survivor Difference	75%	100%	Age Difference	75% 100%	
	1	0.979	0.959	1	0.980	0.960
	2	0.978	0.957	2	0.981	0.962
	3	0.977	0.956	3	0.981	0.964
	4	0.976	0.954	4	0.982	0.965
	5	0.976	0.952	5	0.983	0.967
	6	0.975	0.951	6	0.984	0.969
	7	0.974	0.949	7	0.985	0.970
	8	0.973	0.948	8	0.986	0.972
	9	0.973	0.947	9	0.986	0.973
	10	0.972	0.945	10	0.987	0.975
	11	0.971	0.944	11	0.988	0.976
	12	0.971	0.943	12	0.989	0.978
	13	0.970	0.942	13	0.989	0.979
	14	0.969	0.940	14	0.990	0.980
	15	0.969	0.939	15	0.991	0.982

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