

HOUSE BILL 834

IN THE HOUSE

February 16, 1979

Introduced and referred to  
Committee on State Adminis-  
tration.

February 21, 1979

Committee recommend bill, do  
not pass.

February 22, 1979

Report adopted.

1 HOUSE BILL NO. 834  
2 INTRODUCED BY Balderson

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MUNICIPAL  
5 FIREFIGHTERS' RETIREMENT SYSTEM AND PROVIDING FOR ITS  
6 ADMINISTRATION; AMENDING SECTIONS 19-11-401, 19-11-403,  
7 19-11-504, 19-11-512, 19-11-513, 19-11-606, AND 19-12-301,  
8 MCA; REPEALING SECTIONS 19-11-301 THROUGH 19-11-303, MCA;  
9 AND PROVIDING AN EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12 NEW SECTION. Section 1. Short title. [Sections 1  
13 through 49] may be cited as the "Municipal Firefighters'  
14 Retirement Act".

15 NEW SECTION. Section 2. Purpose -- application of  
16 prior law. (1) As cities other than those of the first or  
17 second class currently have fire department relief  
18 associations, the legislature finds and declares that the  
19 law regarding such associations, although in conflict with  
20 [sections 1 through 49], cannot be repealed. It is the  
21 express intention of the legislature to allow two separate  
22 and distinct retirement systems to exist. The first, which  
23 includes fire department relief associations, applies to  
24 such cities, other than those of the first or second class,  
25 that wish to adopt it. The second, created by [sections 1

1 through 49], applies to cities of the first or second class  
2 and those other cities that wish to adopt it.

3 (2) Title 19, chapter 11, may not be applied in any  
4 way to a city operating under the plan created by [sections  
5 1 through 49].

6 NEW SECTION. Section 3. Municipal firefighters'  
7 retirement system established. A municipal firefighters'  
8 retirement system is established and shall be governed by  
9 the provisions of [sections 1 through 49].

10 NEW SECTION. Section 4. Definitions. Unless the  
11 context requires otherwise, the following definitions apply  
12 in [sections 1 through 49]:

13 (1) "Administrator" means the public employees'  
14 retirement division of the department of administration.

15 (2) "Board" means the retirement board described in  
16 2-15-1009.

17 (3) "Credited service" means the aggregate of a  
18 member's prior service and membership service.

19 (4) "Employer" means any city that is of the first or  
20 second class or that elects to join this plan under [section  
21 7].

22 (5) "Employer annuity" means monthly payments for life  
23 derived from employer and state contributions.

24 (6) "Final average salary" means the monthly  
25 compensation of a member, averaged over the last 36 months

1 of his active service or, in the event he has not been a  
 2 member that long, over the period of his membership.

3 (7) "Firefighter" means a person employed as a  
 4 firefighter by an employer.

5 (8) "Fund" means the agency account in the treasury  
 6 system designated for the use of the plan.

7 (9) "Mandatory retirement date" means the first day of  
 8 the month coinciding with or immediately following, if none  
 9 coincides, the date on which a member attains age 65.

10 (10) "Member" means a person who is employed by an  
 11 employer as a firefighter or who is entitled to a retirement  
 12 allowance by virtue of his service to an employer as a  
 13 firefighter.

14 (11) "Member contributions" means the total of the  
 15 deductions from the compensation of a member, either made  
 16 during a period of active membership under [sections 1  
 17 through 49] or made under a prior plan and transferred to  
 18 this plan, standing to his credit, together with the  
 19 interest thereon.

20 (12) "Member's annuity" means monthly payments for life  
 21 derived from member contributions.

22 (13) "Membership service" means a period of employment  
 23 with an employer occurring after June 30, 1979, during which  
 24 the withholdings required by [sections 1 through 49] have  
 25 been made from a member's monthly compensation and credited

1 to his member contributions account. Pro rata credit shall  
 2 be granted for employment on a part-time basis or for  
 3 employment over a period of less than a complete fiscal  
 4 year.

5 (14) "Minimum retirement date" or "normal retirement  
 6 date" means the first day of the month coinciding with or  
 7 immediately following, if none coincides, the date on which  
 8 a member becomes both age 50 or older and completes 20 or  
 9 more years of credited service.

10 (15) "Monthly compensation" means the wage, excluding  
 11 overtime, holiday payments, shift differential payments,  
 12 compensation time payments, longevity payments, and payments  
 13 in lieu of sick leave and annual leave, a member receives as  
 14 an active firefighter.

15 (16) Any reference to "municipality", "city", or "town"  
 16 includes those jurisdictions which, prior to the effective  
 17 date of a county-municipal consolidation, were incorporated  
 18 municipalities, subsequent districts created for urban  
 19 firefighting services, or the entire county included in the  
 20 county-municipal consolidation.

21 (17) "Plan" means the municipal firefighters'  
 22 retirement system created by [sections 1 through 49].

23 (18) "Prior plan" means the fire department relief  
 24 association plan of a city that elects to join the plan  
 25 under [section 7] or the fire department relief association

1 plan of a city of the first or second class.

2 (19) "Prior service" means a period of employment as a  
3 firefighter for which credit was granted to a member under a  
4 prior plan and has been transferred to this plan.

5 (20) "Retirement allowance" means the employer annuity  
6 plus the member's annuity.

7 (21) "Retirement date" means the date on which the  
8 first payment of the retirement, disability, or survivor  
9 benefits of a member or a beneficiary is payable.

10 (22) "Totally and permanently disabled" means that the  
11 board, upon certification by a licensed and practicing  
12 physician, has determined that a member's disability is of  
13 such a nature as to permanently impair his ability to  
14 discharge his normal duties as a firefighter.

15 NEW SECTION. Section 5. Transfer of assets and  
16 liabilities from prior plans. All funds and obligations  
17 constituting the assets and liabilities of prior plans,  
18 regardless of their form or who holds them, shall be  
19 transferred to the account provided for in [section 20]. The  
20 board shall ascertain the amounts to be apportioned to each  
21 account on [the effective date of this section], and the  
22 state treasurer and the boards of trustees of the fire  
23 department relief associations shall transfer such amounts  
24 to the appropriate accounts on July 1, 1979.

25 NEW SECTION. Section 6. Effect on members of prior

1 plans. (1) All provisions of this plan are effective as to a  
2 member whose retirement date occurred prior to July 1, 1979,  
3 except the amount and mode of payment of such member's  
4 retirement allowance will remain unchanged.

5 (2) [Sections 1 through 49] may not decrease the  
6 benefits of a member under a prior plan.

7 NEW SECTION. Section 7. Election to join plan --  
8 transfer of assets. (1) Cities of the first or second class  
9 must participate in the plan. A city other than one of the  
10 first or second class may, as of July 1, 1979, elect to join  
11 the plan by passing an ordinance stating the election and  
12 the consent of the city to be bound by the provisions of  
13 [sections 1 through 49]. The fire department relief  
14 association of the city shall pass a resolution to the same  
15 effect. Upon the enactment of such an ordinance and the  
16 passage of such a resolution, the provisions of [sections 1  
17 through 49] become applicable to the city. Any city which  
18 enacts such an ordinance and in which the fire department  
19 relief association passes such a resolution shall send  
20 certified copies thereof to the board and shall, as soon as  
21 possible thereafter, cause to be deposited with the board  
22 all cash and securities held by its fire department relief  
23 association. The value of the securities shall be determined  
24 by the board.

25 (2) The board of trustees of the fire department

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1 relief association as of the effective date of the election  
 2 shall certify the proportions, if any, of the funds of the  
 3 association that represents the accumulated contributions of  
 4 the active members and the relative shares of the members as  
 5 of that date. Following the transfer of the cash and  
 6 securities required by subsection (1) and the certification  
 7 required by this subsection, the fire department relief  
 8 association may wind up its affairs. The shares of the  
 9 members shall be charged to the employer and credited to the  
 10 respective individual accounts of the members in the plan  
 11 and administered as if the contributions had been made  
 12 during membership in the plan. Any excess of employer  
 13 credits over charges under this section will be offset, with  
 14 interest, against future required employer contributions.  
 15 Any excess of employer charges over credits under this  
 16 section are payable by the employer, with interest, on a  
 17 basis determined by the procedure described in [section 22].

18 NEW SECTION. Section 8. Penalty for fraud. (1) No  
 19 person may knowingly make any false statement or permit to  
 20 be falsified any records of the plan in an attempt to  
 21 defraud the plan.

22 (2) A person who violates any of the provisions of  
 23 subsection (1) is guilty of a misdemeanor and upon  
 24 conviction shall be punished by a fine not exceeding \$500 or  
 25 imprisonment in the county jail for a term not exceeding 6

1 months, or both.

2 NEW SECTION. Section 9. Power and duties of board.  
 3 (1) The board is authorized to administer, interpret, and  
 4 enforce the provisions of [sections 1 through 49].

5 (2) The board shall establish such uniform rules as  
 6 are necessary to administer the provisions of [sections 1  
 7 through 49]. The board is the sole authority under [sections  
 8 1 through 49] as to the conditions under which persons may  
 9 become members of and receive benefits under the retirement  
 10 system. The board shall determine and may modify allowances  
 11 for retirement and disability under [sections 1 through 49].

12 NEW SECTION. Section 10. Department to provide forms  
 13 -- information from employers. The department of  
 14 administration shall prepare such forms as it finds  
 15 necessary for the employers to complete to provide all the  
 16 information necessary to administer [sections 1 through 49],  
 17 and the cities shall give the department of administration  
 18 all data necessary to carry out the purpose and intent of  
 19 [sections 1 through 49].

20 NEW SECTION. Section 11. Administrative expenses. The  
 21 expense of administration of [sections 1 through 49],  
 22 exclusive of amounts required to be paid as benefits to or  
 23 on behalf of a member, shall be borne by the state and shall  
 24 ~~be~~ be in addition to the amounts required of it as  
 25 contributions.

1 NEW SECTION. Section 12. Active membership. (1) A  
2 firefighter becomes an active member under the plan:

3 (a) on the date his employment by an employer  
4 commences;

5 (b) on July 1, 1979, if he is employed by an employer  
6 on that date; or

7 (c) in the case of an employer that elects to join the  
8 plan as provided in [section 7], on the effective date of  
9 such election if he is employed by the employer on that  
10 date.

11 (2) Upon becoming eligible for membership, he shall  
12 complete such forms and furnish such proof as may be  
13 required by the board.

14 NEW SECTION. Section 13. Ineligibility for other  
15 retirement plans. No active member is eligible to be covered  
16 under any other mandatory retirement plan for firefighters  
17 to which an employer is required to contribute on his behalf  
18 while he is eligible to be covered by this plan.

19 NEW SECTION. Section 14. Inactive membership. (1) An  
20 active member becomes an inactive member upon the occurrence  
21 of the earlier of the following:

22 (a) the date he ceases to be employed by an employer  
23 and becomes entitled to a retirement allowance;

24 (b) the date of commencement of an approved absence  
25 from active duty with an employer of a substantial duration.

1 (2) An inactive member becomes an active member on the  
2 day he returns to active duty with an employer. Upon again  
3 becoming an active member, his retirement allowance, if any,  
4 shall cease being paid to him until he again becomes an  
5 inactive member.

6 NEW SECTION. Section 15. Termination of employment  
7 prior to retirement. Upon termination of the employment of  
8 an active member prior to his retirement date, he shall  
9 withdraw the amount of his member contributions in lieu of  
10 all other benefits under the plan. If he has 10 years or  
11 more of service, the amount paid shall include regular  
12 interest, at a rate to be determined by the board, on such  
13 amounts. If he has less than 10 years of service, he shall  
14 receive only the amount paid through salary deductions,  
15 without interest. If an active member's employment  
16 terminates by reason of his death, his beneficiaries are  
17 entitled to the benefits prescribed in [section 42].

18 NEW SECTION. Section 16. Cessation of membership. A  
19 member shall cease to be a member upon the occurrence of the  
20 earlier of the following:

21 (1) the date he withdraws his member contributions in  
22 lieu of all other benefits under the plan;

23 (2) the date of his death.

24 NEW SECTION. Section 17. Credited service to be  
25 cumulative. A member is entitled to benefits upon the entire

1 period of his credited service and final average salary  
 2 without regard to the number of employers by whom he was  
 3 employed or the number of periods of his employment so that  
 4 no duplication of credited service occurs.

5 NEW SECTION. Section 18. Military service. A  
 6 firefighter serving in the United States military in time of  
 7 war or national emergency shall be given credit in his  
 8 firefighting record for such service in the same manner as  
 9 though he were on active firefighting duty.

10 NEW SECTION. Section 19. Election to qualify previous  
 11 military service. (1) A member with 15 years or more of  
 12 service may, at any time prior to his retirement, make a  
 13 written election with the board to qualify all or any  
 14 portion of his active service in the armed forces of the  
 15 United States for the purpose of calculating retirement  
 16 benefits, up to a maximum of 5 years, if he is not otherwise  
 17 eligible to receive credit. To qualify this service he must  
 18 contribute to the account the actuarial cost of granting the  
 19 service to be determined by the board based on his  
 20 compensation and normal contribution rate as of his 16th  
 21 year and as many succeeding years as are required to qualify  
 22 this service, with interest from the date he becomes  
 23 eligible for this benefit to the date he contributes. He may  
 24 not qualify more of his military service than he has service  
 25 in excess of 15 years. Military service purchased under this

1 section may not be used in the determination of eligibility  
 2 for a service retirement requiring a minimum of 20 years of  
 3 service.

4 (2) If a member has retired from active duty in the  
 5 armed forces of the United States with normal service  
 6 retirement benefits, he may not qualify his military service  
 7 under subsection (1). However, a member who is serving or  
 8 has served in the military reserves with the expectation of  
 9 receiving a military service pension may qualify his active  
 10 military service under subsection (1) if his active duty in  
 11 the armed forces of the United States is not more than 25%  
 12 of the total of all his years of military service, including  
 13 reserve and active duty time.

14 NEW SECTION. Section 20. Retirement account. On July  
 15 1, 1979, there will be an account in the agency fund to be  
 16 maintained on behalf of the plan. The state treasurer is the  
 17 custodian of the account subject to the exclusive  
 18 administrative control of the board.

19 NEW SECTION. Section 21. Management of funds by  
 20 department of administration. Except as otherwise provided  
 21 in [sections 1 through 49], the department of  
 22 administration, through the administrator and the board of  
 23 investments, shall administer, invest, account for, and  
 24 treat the funds deposited with it under [sections 1 through  
 25 49] in accordance with the rules dealing with the public

1 employees' retirement system, insofar as such rules are not  
2 inconsistent with those promulgated and adopted by the  
3 board. The contributions of the state, employers, and  
4 members paid to the administrator under [sections 1 through  
5 49] may be commingled for investment purposes.

6 NEW SECTION. Section 22. Unfunded liabilities. (1) It  
7 is found and declared by the legislature that many cities  
8 operating under prior plans have excess and unfunded  
9 liabilities under such prior plans, which liabilities cannot  
10 be amortized by the percentage contributions set forth in  
11 [sections 1 through 49].

12 (2) The administrator shall, on or before October 1,  
13 1979, determine the excess and unfunded liability of each  
14 city that participates in the plan created by [sections 1  
15 through 49]. The determination of the administrator must be  
16 negotiated between each city and the administrator. Each  
17 city found by the administrator to have an excess and  
18 unfunded liability under a prior plan which as of July 1,  
19 1979, is not funded by sums on deposit or funds available  
20 for deposit with the administrator shall pay an additional  
21 sum over a period of time to amortize its excess liability  
22 as determined by agreement between the city and the  
23 administrator.

24 (3) Each city found by the administrator to be paying  
25 an amount in excess of the amount necessary to amortize its

1 liabilities under the prior plan and under [sections 1  
2 through 49] shall receive a credit in the accounts of the  
3 administrator for any such excess payments.

4 (4) For each city with an unfunded liability, any  
5 portion of the member, employer, and state contributions  
6 that exceeds the amount necessary to maintain the current  
7 level of unfunded liability must be applied to the reduction  
8 of the unfunded liability.

9 NEW SECTION. Section 23. Actuarial valuation. The  
10 board shall engage the services of a qualified actuary to  
11 conduct an actuarial valuation of the plan in each  
12 even-numbered year. It shall include the actuary's  
13 determination of the financial condition of the plan, the  
14 level of annual contributions required to maintain the plan  
15 on an actuarially sound basis, and, if applicable, the level  
16 of annual contributions required to amortize the excess and  
17 unfunded liabilities described in [section 22]. A qualified  
18 actuary is one who is a member of the American academy of  
19 actuaries or of any organization considered by the board to  
20 have similar standards.

21 NEW SECTION. Section 24. Transfer of dormant member  
22 account. The board may, in its discretion, transfer member  
23 contributions to the employer's account if the member's  
24 contribution account has been dormant for a period of 10  
25 years. No right of the member may be jeopardized by such a



1 transfer, and the member contributions shall be transferred  
2 back to the member's name upon his subsequent reinstatement  
3 as a member.

4 NEW SECTION. Section 25. Member contributions. The  
5 treasurer or other appropriate official of each employer  
6 shall retain from the monthly compensation of each active  
7 member a sum equal to 9% of his monthly compensation,  
8 excluding overtime, holiday payments, shift differential  
9 payments, compensation time payments, longevity payments,  
10 and payments in lieu of sick leave and annual leave, for his  
11 services as a firefighter. The monthly deduction from the  
12 salaries of firefighters shall be paid to the administrator  
13 for the purpose of paying the retirement allowances of  
14 retired firefighters.

15 NEW SECTION. Section 26. Vesting and withdrawal of  
16 contributions. A member is at all times fully vested in the  
17 deductions made from his compensation as a member or as a  
18 member of a prior plan standing to his credit and may, at  
19 his discretion, withdraw the full amount of these deductions  
20 upon his termination of employment in accordance with  
21 [section 15] and forfeit all rights and interest with  
22 respect to any benefits that would otherwise become payable  
23 under the plan.

24 NEW SECTION. Section 27. Redeposit of amounts  
25 withdrawn upon reinstatement. (1) Upon reinstatement to

1 active membership, a member may redeposit in the fund, in  
2 one lump sum or in installments not to exceed 12 monthly or  
3 24 semimonthly installments, an amount equal to the member  
4 contributions that he withdrew plus an amount equal to the  
5 interest that would have been credited to his account had he  
6 not withdrawn his member contributions. If a member makes  
7 such a redeposit, his credited service shall be reinstated.

8 (2) If an active member does not elect to make the  
9 redeposit provided for in subsection (1), he forfeits his  
10 credited service for the period attributable to the  
11 withdrawn member contributions.

12 NEW SECTION. Section 28. Payment of employer and  
13 state contributions. Employer and state contributions shall  
14 be paid to the administrator who shall, as soon as  
15 practicable after their receipt, deposit them with the state  
16 treasurer.

17 NEW SECTION. Section 29. State contribution. The  
18 state shall make its contributions through the state auditor  
19 out of the premium taxes on the insurance risks enumerated  
20 in 19-11-512(3). Such payments shall be made annually from  
21 the gross premium taxes after deduction for cancellations  
22 and returned premiums. The administrator shall notify the  
23 auditor of the annual compensation paid to all active  
24 members during the preceding year, and the state's  
25 contribution is 13% of such compensation.

1        NEW SECTION. Section 30. Employer contribution. Each  
 2 employer shall make its contribution on behalf of members  
 3 through the city treasurer or other appropriate official out  
 4 of money available to the city for such purpose. The  
 5 employe's contribution is 13% of the total monthly  
 6 compensation paid to all active members during the preceding  
 7 month and is payable monthly to the administrator.

8        NEW SECTION. Section 31. Taxing authority of  
 9 employers. (1) For the purpose of making contributions  
 10 required of a city under [sections 1 through 49], whenever  
 11 the demand for deposits of such contributions cannot be met  
 12 within the general taxing authority and other revenues  
 13 available to the city for that purpose, the appropriate  
 14 authority of the city may levy any additional tax authorized  
 15 by law until the general taxing authority and other revenue  
 16 available for that purpose is sufficient to meet the demand.

17        (2) "General taxing authority", as used in this  
 18 section, means that levy which the city may make under the  
 19 all-purpose levy or under multiple-purpose levies, if the  
 20 city is using multiple-purpose levies.

21        (3) No provision of any statute relating to the  
 22 all-purpose levy may be so construed as to limit the  
 23 additional taxing authority created by this section.

24        NEW SECTION. Section 32. Other money credited as  
 25 employer contributions. All gifts, bequests, and emoluments

1 given to an employer or member for the benefit of the plan  
 2 or because of any member's service as a firefighter, except  
 3 when specifically allowed to be retained by the member by  
 4 his employer, and all money withheld from the monthly  
 5 compensation of a member for violation of the rules of his  
 6 employer shall be paid to the administrator. The  
 7 administrator shall credit them to the fund and, as soon as  
 8 practicable after their receipt, deposit them with the state  
 9 treasurer. Such amounts are employer contributions but are  
 10 in addition to the amounts required by [section 30].

11        NEW SECTION. Section 33. Eligibility for service  
 12 retirement. Members are eligible for retirement and shall  
 13 retire as provided in this section:

14        (1) A member is eligible to receive a service  
 15 retirement allowance when he has reached the age of 50 and  
 16 has completed 20 years or more in the aggregate as a  
 17 firefighter in any capacity or rank.

18        (2) Firefighters who reach the age of 65 while in  
 19 active service shall retire.

20        NEW SECTION. Section 34. Election to serve additional  
 21 years. (1) A firefighter who is eligible for service  
 22 retirement under [section 33(1)] may retire as of the date  
 23 he becomes eligible or may elect to serve an additional 1 to  
 24 10 years as an active firefighter, except that he may not  
 25 elect to serve past his 65th birthday, the mandatory

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1 retirement date.

2 (2) A firefighter who completes 20 years of service  
3 before reaching the age of 50 is considered to have elected  
4 to serve an additional year for each year between the  
5 completion of his 20th year of service and his 50th birthday  
6 and shall be paid the additional 1%, as prescribed in  
7 [section 36(2)], for each such year.

8 NEW SECTION. Section 35. Application for service  
9 retirement. On or after a member's minimum retirement date  
10 and prior to his mandatory retirement date, he may retire on  
11 a service retirement allowance by making written application  
12 to the employer. The employer shall forward the application  
13 to the board not less than 30 days or more than 90 days  
14 before the elected retirement date. The application shall  
15 state the elected retirement date.

16 NEW SECTION. Section 36. Amount of retirement  
17 allowance. (1) A firefighter who is eligible under [section  
18 33(1)] and does not elect to serve any additional years as  
19 an active firefighter or who is retired under [section  
20 33(2)] prior to reaching 20 years of service shall receive a  
21 service retirement allowance equal to one-half his final  
22 average salary.

23 (2) A firefighter who is eligible for service  
24 retirement after 20 years of service and who elects to serve  
25 additional years shall receive the allowance provided for in

1 subsection (1) plus an additional 1% of such allowance per  
2 year of additional service, up to a maximum of 60% of the  
3 final average salary.

4 (3) A firefighter who is retired under [section 33(2)]  
5 and who was theretofore eligible at his option to be retired  
6 under [section 33(1)] but elected to serve additional years  
7 shall be paid for the additional years over his original  
8 eligibility at the rate prescribed in subsection (2).

9 NEW SECTION. Section 37. Board's determination of  
10 disability. The board shall determine whether a member has  
11 become totally and permanently disabled and whether the  
12 disability is duty-related. In the discharge of its duties  
13 regarding such determination, the board, any member thereof,  
14 or any duly authorized representative of the board may order  
15 medical examinations, conduct hearings, administer oaths and  
16 affirmations, take depositions, certify to official acts,  
17 and issue subpoenas to compel the attendance of witnesses  
18 and the production of books, papers, correspondence,  
19 memoranda, and documents considered necessary as evidence in  
20 connection with the claim for disability retirement. The  
21 board shall secure medical service and advice necessary to  
22 carry out the purposes of this section.

23 NEW SECTION. Section 38. Eligibility for disability  
24 retirement. If a member is determined by the board to be  
25 totally and permanently disabled, he is entitled to a

1 disability retirement allowance, regardless of the length of  
2 his service, commencing as of the first day of the month  
3 coinciding with or immediately following, if none coincides,  
4 the date on which he became totally and permanently  
5 disable .

6 NEW SECTION. Section 39. Amount of retirement  
7 allowance. (1) A firefighter who is eligible under [section  
8 38] before completing 20 years of service shall receive a  
9 disability retirement allowance equal to one-half his  
10 average final salary.

11 (2) A firefighter who is retired under [section 38]  
12 and who, at the time of his injury or disability, was  
13 eligible at his option to be retired under [section 33(1)]  
14 but had elected to serve additional years and was then  
15 serving such additional years shall be paid for the  
16 additional years at the rate prescribed in [section 36(2)].

17 NEW SECTION. Section 40. Termination of allowance. If  
18 an inactive member is determined by the board to be no  
19 longer totally and permanently disabled, his disability  
20 retirement allowance shall cease as of the date of such  
21 determination and he shall be notified of the determination  
22 by the board. The board may review the status of any  
23 inactive member at any time.

24 NEW SECTION. Section 41. Reinstatement upon  
25 termination of allowance. (1) Any inactive member whose

1 disability retirement allowance is canceled as provided in  
2 [section 40] shall be reinstated to the position held by him  
3 immediately before his retirement or to a position in the  
4 same classification with duties within his capacity. The  
5 board shall advise the employer that the disability  
6 retirement allowance has been canceled and that the inactive  
7 member is eligible for reinstatement to duty. The fact that  
8 he was retired for disability may not prejudice any right to  
9 reinstatement to duty which the inactive member may have or  
10 claim to have.

11 (2) If the inactive member again becomes an active  
12 member by returning to active work for an employer within 30  
13 days following his receipt of notice under [section 40], he  
14 shall be considered to have been continuously employed  
15 during the term of his disability. If the inactive member  
16 fails to become an active member by returning to active work  
17 for an employer within 30 days following receipt of such  
18 notice, his termination of employment shall be considered to  
19 have occurred as of his disability retirement date and the  
20 retirement allowance, if any, to which he becomes entitled  
21 on his service retirement shall be determined accordingly.

22 NEW SECTION. Section 42. Death benefits. (1) A  
23 member's retirement allowance shall be paid first to the  
24 member during his lifetime and, upon his death, in the  
25 manner and to the persons designated in subsection (2).

1 (2) Upon the death of a firefighter before or after  
 2 retirement, his surviving spouse, if there is one, shall, as  
 3 long as such spouse remains the surviving spouse, be paid  
 4 from the fund a sum equal to one-half of the firefighter's  
 5 final average salary. If the firefighter leaves one or more  
 6 dependent minor children, then, upon his death if he leaves  
 7 no surviving spouse or upon the death or remarriage of the  
 8 surviving spouse, his surviving dependent minor children,  
 9 collectively if there is more than one, shall receive the  
 10 same monthly payments a surviving spouse would receive,  
 11 until they reach the age of 18 years or are married. The  
 12 payments shall be made to their duly appointed, qualified,  
 13 and acting guardian for their use. If there is more than one  
 14 such child, upon each child reaching the age of 18 years or  
 15 marrying, the pro rata payments to that child shall cease  
 16 and shall be made to the remaining children until all the  
 17 children have reached the age of 18 years or are married.

18 NEW SECTION. Section 43. Payment of retirement  
 19 allowances. Retirement allowances under [sections 1 through  
 20 49] shall be paid out of the fund and shall be determined as  
 21 provided in [sections 34, 36, and 39].

22 NEW SECTION. Section 44. Retirement allowances to be  
 23 monthly and fixed. The retirement allowances granted under  
 24 the provisions of [sections 1 through 49] shall be paid in  
 25 monthly installments. They may not be increased or

1 decreased, except as specifically provided in [sections 1  
 2 through 49], or repealed or revoked except by the  
 3 legislature.

4 NEW SECTION. Section 45. Correction of erroneous  
 5 payments. If any change in records fraudulently made or any  
 6 mistake in records inadvertently made results in any member,  
 7 survivor, or beneficiary receiving more or less than he was  
 8 entitled to, then, on the discovery of the error, the board  
 9 shall correct the error and adjust the payments to the  
 10 member, survivor, or beneficiary in an equitable manner.

11 NEW SECTION. Section 46. Board's authority to refuse  
 12 to make payments. The board may revoke, refuse to grant, or  
 13 suspend a member's annuity for disability or death caused by  
 14 wrongful conduct. If the disability causing a member to  
 15 retire or the death of a member is directly and proximately  
 16 caused by the member's immoral or intemperate conduct or  
 17 gross negligence, the board may refuse to grant, revoke, or  
 18 suspend the employer annuity.

19 NEW SECTION. Section 47. Exemption from taxes. Any  
 20 money received as a retirement allowance in accordance with  
 21 the provisions of [sections 1 through 49] is exempt from any  
 22 state or municipal tax.

23 NEW SECTION. Section 48. Protection from legal  
 24 process -- unassignability. The benefits payable under  
 25 [sections 1 through 49] are not subject to the claims of any

1 creditor of a member, beneficiary, or survivor or to  
2 attachment, garnishment, or other legal or equitable  
3 process. No member, beneficiary, or survivor may alienate,  
4 anticipate, commute, pledge, encumber, assign, or sell any  
5 of such benefits.

6 NEW SECTION. Section 49. Supplement to certain  
7 retirement allowances. The plan shall pay to each  
8 firefighter retired before July 1, 1973, or his surviving  
9 spouse and children a monthly retirement allowance of not  
10 less than one-half the regular monthly salary paid to a  
11 confirmed active firefighter of the city that last employed  
12 him as a firefighter, as provided each year in the budget of  
13 that city. In the case of volunteer firefighters, the  
14 retirement allowance may not exceed \$75 per month.  
15 Distribution of the funds provided for this purpose under  
16 19-11-606(1) shall be made as follows:

17 (1) At the beginning of each fiscal year the  
18 administrator shall request and the state auditor shall  
19 issue from the earmarked revenue fund and deliver to the  
20 administrator an amount certified to be equal to the total  
21 annual dollar difference between what the retirees or their  
22 surviving spouses and children received from the fund and  
23 one-half of the salary paid by the respective city or town  
24 to a confirmed active firefighter for the fiscal year just  
25 preceding.

1 (2) The administrator shall use the funds to increase  
2 the monthly retirement allowances of the retirees or their  
3 surviving spouses and children to an amount equal to  
4 one-half of the salary that was paid to a confirmed active  
5 firefighter in the respective city or town for the preceding  
6 year.

7 Section 50. Section 19-11-401, MCA, is amended to  
8 read:

9 "19-11-401. Management of association. The management  
10 of the fire department relief associations ~~in municipalities~~  
11 ~~other than first and second class cities~~ is vested in the  
12 boards of trustees, except as provided in 19-11-402 and  
13 19-11-403."

14 Section 51. Section 19-11-403, MCA, is amended to  
15 read:

16 "19-11-403. Investment of fund by board of  
17 investments. (1) When the average yield on investments of  
18 public retirement funds under the board of investments  
19 exceeds by 1% in any fiscal year the average yield on  
20 investments of the fund made pursuant to 19-11-402, the  
21 surplus money in the fund shall be remitted to the state  
22 treasurer for investment by under the direction of the board  
23 of investments as is provided in ~~19-11-382 for associations~~  
24 ~~in first and second class cities 17-6-204~~. Every 6 months  
25 the association shall submit a financial statement detailing

1 its investments to the department of community affairs, and  
 2 the department shall advise the association of the current  
 3 yield on investments of public retirement funds.

4 (2) As used in subsection (1), "surplus money" means  
 5 the excess over the greater of the following:

6 (a) 1 1/2 times the monthly benefit paid in the  
 7 preceding month; or

8 (b) \$5,000."

9 Section 52. Section 19-11-504, MCA, is amended to  
 10 read:

11 "19-11-504. Amount of special tax levy. (1) Whenever  
 12 ~~the total amount of the fund is less than 2% of the taxable~~  
 13 ~~valuation of all taxable property within the limits of the~~  
 14 ~~city or town, the special tax levy shall be~~

15 ~~(a) not less than 1 mill or more than 4 mills on each~~  
 16 ~~dollar of taxable valuation of all taxable property within~~  
 17 ~~the limits of the city or town; and~~

18 ~~(b) an amount sufficient to provide a growth per year~~  
 19 ~~in the fund, considering all sources of income to the fund~~  
 20 ~~and the payment of obligations out of the fund, equal to the~~  
 21 ~~sum produced by 1 mill levied on the taxable valuation of~~  
 22 ~~all the taxable property in the city or town;~~

23 ~~(2) The special tax levy shall be a fractional part of~~  
 24 ~~1 mill whenever:~~

25 ~~(a) the total amount of the fund is less than 2% but~~

1 ~~more than 1% of the taxable valuation of all taxable~~  
 2 ~~property within the city or town; and~~

3 ~~(b) the special tax levy of a fractional part of 1~~  
 4 ~~mill will produce sufficient revenue to cause the fund,~~  
 5 ~~considering all sources of income to the fund and all~~  
 6 ~~payments to be made out of the fund, to exceed 2% of the~~  
 7 ~~taxable valuation of all taxable property within the city or~~  
 8 ~~town;~~

9 ~~(3) In cities of the third class, when whenever the~~  
 10 ~~fund contains an amount which is less than 2% of the taxable~~  
 11 ~~valuation of all taxable property in the city or town, the~~  
 12 ~~city council shall levy an annual special tax of not less~~  
 13 ~~than 1 mill and not more than 4 mills on each dollar of~~  
 14 ~~taxable valuation of all taxable property within the city or~~  
 15 ~~town."~~

16 Section 53. Section 19-11-512, MCA, is amended to  
 17 read:

18 "19-11-512. State auditor to pay association out of  
 19 insurance premium taxes. (1) At the end of the fiscal year  
 20 the state auditor shall issue and deliver the payment  
 21 described in this subsection to the treasurer of every city  
 22 or town of the first and second class which has a fire  
 23 department relief association entitled by law to receive  
 24 payments. The payment shall be for the use and benefit of  
 25 the association. It shall be paid out of the premium taxes

1 on insurance risks enumerated in subsection (6) collected by  
 2 the state auditor and shall be equal to 10% of the total  
 3 annual compensation paid by the city or town to its paid or  
 4 part-paid firefighters for services in the previous calendar  
 5 year. The city clerk of the city or town shall certify in  
 6 writing to the state auditor on or before April 1 of each  
 7 year the amount paid by the city or town as compensation  
 8 for services to paid or part-paid firefighters.

9 (2) When there is a disaster resulting in death or  
 10 injury sufficient to draw the pensions of 10% of the active  
 11 force and the funds after receiving all moneys provided for  
 12 in 19-11-501, 19-11-503, 19-11-504, and subsection (1) of  
 13 this section does not show at least the 1% growth  
 14 referred to in 19-11-504, the treasurer of the association  
 15 shall request and the state auditor shall issue and deliver  
 16 an additional payment under the same conditions described in  
 17 subsection (1). The payment shall be in an amount sufficient  
 18 to cause at least the above mentioned 1% growth in the  
 19 funds.

20 (3) If a city is not entitled to receive a sum equal  
 21 to 1 1/2 mills of its total taxable value under subsections  
 22 (1) and (2), the association of the city shall receive its  
 23 money in the manner provided in subsections (4) and (5) for  
 24 cities of the third class.

25 (4)(1) At the end of the fiscal year, the state

1 auditor shall issue and deliver the warrant described in  
 2 this subsection to the treasurer of every city or town  
 3 except cities and towns of the first or second class which  
 4 has a fire department relief association entitled by law to  
 5 receive payments. The warrant shall be for the use and  
 6 benefit of the association. It shall be for an amount equal  
 7 to 1 1/2 mills of the total taxable value of the city or  
 8 town and shall be paid out of the premium taxes on insurance  
 9 risks enumerated in subsection (6) (3) collected by the  
 10 state auditor.

11 (5)(2) If the payment provided for in subsection (4)  
 12 (1) is less than \$100, the association shall receive an  
 13 additional payment from the same tax moneys so that the  
 14 total amount received is \$100.

15 (6)(3) The risks referred to in subsections subsection  
 16 (1) and (4) are:

17 (a) insurance of houses, buildings, and all other  
 18 kinds of property against loss or damage by fire or other  
 19 casualty;

20 (b) all kinds of insurance on goods, merchandise, or  
 21 other property in the course of transportation, whether by  
 22 land, water, or air;

23 (c) insurance against loss or damage to motor vehicles  
 24 resulting from accident, collision, or marine and inland  
 25 navigation and transportation perils;



1 (d) insurance of growing crops against loss or damage  
2 resulting from hail or the elements;

3 (e) insurance against loss or damage by water to any  
4 goods or premises arising from the breakage or leakage of  
5 sprinklers, pumps, or other apparatus;

6 (f) insurance against loss or legal liability for loss  
7 because of damage to property caused by the use of teams or  
8 vehicles, whether by accident or collision or by explosion  
9 of any engine, tank, boiler, pipe, or tire of any vehicle;  
10 and

11 (g) insurance against theft of the whole or any part  
12 of any vehicle."

13 Section 54. Section 19-11-513, MCA, is amended to  
14 read:

15 "19-11-513. Transfer of premium taxes to state  
16 treasury. The state auditor shall estimate the portion of  
17 premium taxes needed to make the payments required by this  
18 chapter and shall pay an amount equal to the estimate into  
19 the state treasury, to the credit of the earmarked revenue  
20 fund. ~~The state auditor shall pay the actuary fee as~~  
21 ~~required by 19-11-303.~~ Any balances remaining after such  
22 payments have been ordered shall be transferred to the  
23 general fund."

24 Section 55. Section 19-11-606, MCA, is amended to  
25 read:

1 "19-11-606. Supplement to certain pensions. (1) In  
2 addition to the taxes on premiums required by law to be paid  
3 by each insurer doing business in this state that is  
4 authorized to effect insurance on risks enumerated in  
5 19-11-512, there is a tax of 1 1/2% on the fire portion of  
6 the direct premiums received during the calendar year of  
7 1975 and each succeeding year, with allowance for  
8 cancellations and returned premiums. The insurance  
9 commissioner shall collect the tax during March of each year  
10 and deposit the moneys in the earmarked revenue fund. The  
11 auditor shall pay claims as provided in subsection (2) of  
12 this section and [section 49]. As those persons who are to  
13 receive the fund die, the tax shall be reduced  
14 proportionately, and when no eligible person, as defined by  
15 subsection (2) and [section 49], survives, the tax  
16 terminates and the remaining fund, if any, shall be  
17 transferred to the general fund.

18 (2) Effective January 1, 1976, each association shall  
19 pay to the firefighters retired before July 1, 1973, or  
20 their surviving spouses and children a monthly pension of  
21 not less than one-half the regular monthly salary paid to a  
22 confirmed active firefighter of that city, as provided each  
23 year in the budget of that city. In the case of volunteer  
24 firefighters, the pension may not exceed \$75 per month.  
25 Distribution of the funds provided for this purpose under

1 subsection (1) shall be made as follows:

2 (a) At the beginning of each fiscal year the treasurer  
3 of each association shall request and the state auditor  
4 shall issue from the earmarked revenue fund and deliver to  
5 the treasurer of the respective city or town an amount  
6 certified to be equal to the total annual dollar difference  
7 between what the retirees or their surviving spouses and  
8 children received from the fund and one-half of the salary  
9 paid by the respective city or town to a confirmed active  
10 firefighter for the fiscal year just preceding.

11 (b) The treasurer of a city or town receiving the  
12 funds shall immediately disburse them to the treasurer of  
13 the respective association.

14 (c) The treasurer of the association shall utilize  
15 these funds to increase the monthly pension of retirees or  
16 their surviving spouses and children to an amount equal to  
17 one-half of the salary that was paid to a confirmed active  
18 firefighter in the city or town for the preceding year."

19 Section 56. Section 19-12-301, MCA, is amended to  
20 read:

21 "19-12-301. Fire insurance premium tax to be paid into  
22 fund. The state auditor and ex officio commissioner of  
23 insurance shall annually deposit in the volunteer  
24 firefighters' fund a sum equivalent to 5% of the premium  
25 taxes collected from insurers authorized to effect insurance

1 against risks enumerated in 19-11-512, computed after the  
2 amounts provided for by [section 29] and 19-11-512 have  
3 first been deducted. The moneys shall be used for the  
4 payment of claims and administrative costs as provided in  
5 this chapter."

6 Section 57. Repealer. Sections 19-11-301 through  
7 19-11-303, MCA, are repealed.

8 Section 58. Effective date. Section 5 is effective on  
9 passage and approval.

-End-