

House Bill 745

In The House

February 13, 1981	Introduced and referred to Committee on State Administration.
February 16, 1981	Fiscal note requested.
April 23, 1981	Died in Committee.

1 Hague BILL NO. 745  
 2 INTRODUCED BY Baron

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 19-9-1007, 19-11-401,  
 7 19-11-403, 19-11-504, 19-11-512 THROUGH 19-11-514,  
 8 19-11-606, AND 19-12-301, MCA; REPEALING SECTIONS 19-11-301  
 9 THROUGH 19-11-303, MCA; AND PROVIDING EFFECTIVE DATES."

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. Because 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 these 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 20 [sections 1 through 49], cannot be repealed.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 cities other than those of the first or second class that  
 25 wish to adopt it. The second, created by [sections 1 through

1 49], applies to cities of the first or second class that  
 2 have full-paid firefighters and those other cities that wish  
 3 to adopt it but excludes cities with only volunteer  
 4 firefighters.

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

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

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

14 (2) "Board" means the public employees' retirement  
 15 board described in 2-15-1009.

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

18 (4) "Employer" means any city of the first or second  
 19 class that has full-paid firefighters or that elects to join  
 20 this plan under [section 7].

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

23 (6) "Final average salary" means the monthly  
 24 compensation of a member hired after July 30, 1981, averaged  
 25 over the last 36 months of his active service or, if he has

1 not been a member that long, over the period of his  
2 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) "Member" means a person who is employed by an  
8 employer as a firefighter or who is entitled to a retirement  
9 allowance by virtue of his service to an employer as a  
10 firefighter.

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

16 (11) "Member's annuity" means monthly payments for life  
17 derived from member contributions.

18 (12) "Membership service" means a period of employment  
19 with an employer occurring after June 30, 1981, during which  
20 the withholdings required by [sections 1 through 49] have  
21 been made from a member's monthly compensation and credited  
22 to his member contributions account. Pro rata credit must be  
23 granted for employment on a part-time basis or for  
24 employment over a period of less than a complete fiscal  
25 year.

1 (13) "Minimum retirement date" or "normal retirement  
2 date" means the first day of the month coinciding with or  
3 immediately following, if none coincides, the date on which:

4 (a) a member hired on or before June 30, 1981, both  
5 reaches age 50 or older and completes 20 or more years of  
6 credited service;

7 (b) a member hired after June 30, 1981, both reaches  
8 age 55 and completes 23 years of service.

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

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

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

22 (17) "Prior plan" means the fire department relief  
23 association plan of a city that elects to join the plan  
24 under [section 7] or the fire department relief association  
25 plan of a city of the first or second class that has

1 full-paid firefighters.

2 (18) "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 (19) "Retirement allowance" means the employer annuity  
6 plus the member's annuity.

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

10 (21) "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. (1) All funds and obligations  
17 constituting the assets and liabilities of prior plans,  
18 regardless of their form or who holds them, must be  
19 transferred to the account provided for in [section 20]. The  
20 board shall determine 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, 1981.

25 (2) The board may subpoena records and determine the

1 total amount of funds held by the boards of trustees.

2 NEW SECTION. Section 6. Effect on members of prior  
3 plans. (1) All provisions of this plan are effective as to a  
4 member whose retirement date occurred before July 1, 1981,  
5 except the amount and mode of payment of the member's  
6 retirement allowance will remain unchanged.

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

9 NEW SECTION. Section 7. Election to join plan --  
10 transfer of assets. (1) Cities of the first and second class  
11 that have full-paid firefighters must participate in the  
12 plan. Other cities, except for a city with only volunteer  
13 firefighters, may, as of July 1, 1981, elect to join the  
14 plan by passing an ordinance stating the election and the  
15 consent of the city to be bound by the provisions of  
16 [sections 1 through 49]. The fire department relief  
17 association of the city shall pass a resolution to the same  
18 effect. Upon enactment of the ordinance and passage of the  
19 resolution, the provisions of [sections 1 through 49] become  
20 applicable to the city. Any city that enacts such an  
21 ordinance and in which the fire department relief  
22 association passes such a resolution shall send certified  
23 copies thereof to the board and shall, as soon as possible  
24 thereafter, deposit with the board all cash and securities  
25 held by its fire department relief association attributable

1 to full- or part-paid firefighters. The value of the  
2 securities shall be determined by the board.

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

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

25 (2) A person who violates any of the provisions of

1 subsection (1) is guilty of a misdemeanor and upon  
2 conviction shall be punished by a fine not exceeding \$500 or  
3 imprisonment in the county jail for a term not exceeding 6  
4 months, or both.

5 NEW SECTION. Section 9. Powers and duties of board.  
6 The powers and duties of the board include:

7 (1) administering, interpreting, and enforcing the  
8 provisions of [sections 1 through 49];

9 (2) establishing uniform rules to administer the  
10 provisions of [sections 1 through 49];

11 (3) determining the conditions under which persons may  
12 become members of and receive benefits under the retirement  
13 plan; and

14 (4) determining and modifying service, disability, and  
15 survivorship allowances under [sections 1 through 49].

16 NEW SECTION. Section 10. Department to provide forms  
17 -- information from employers. The department of  
18 administration shall prepare forms to compile information  
19 from the employers necessary to administer [sections 1  
20 through 49], and the cities shall give the department of  
21 administration all data necessary to carry out the purpose  
22 and intent of [sections 1 through 49].

23 NEW SECTION. Section 11. Administrative expenses. (1)  
24 The expense of administering [sections 1 through 49],  
25 exclusive of the payment of retirement and other benefits,

1 may be paid from the fund.

2 (2) Before July 15 of each year, the board may compute  
3 the administrative costs for the preceding fiscal year and  
4 transfer that amount from the fund to the public employees'  
5 retirement system account in the agency fund.

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

8 (a) on the first day of his employment by an employer;

9 (b) on July 1, 1981, if he is employed by an employer  
10 on that date; or

11 (c) in the case of an employer that elects to join the  
12 plan as provided in [section 7], on the effective date of  
13 this election if he is employed by the employer on that  
14 date.

15 (2) Upon becoming eligible for membership, he shall  
16 complete the forms and furnish any proof required by the  
17 board.

18 NEW SECTION. Section 13. Ineligibility for other  
19 retirement plans. No active member is eligible to be covered  
20 under any other mandatory retirement plan for firefighters  
21 to which an employer is required to contribute on the  
22 member's behalf while he is eligible to be covered by this  
23 plan.

24 NEW SECTION. Section 14. Inactive membership. (1) An  
25 active member becomes an inactive member upon the occurrence

1 of the earlier of the following:

2 (a) the date he ceases to be employed by an employer  
3 and becomes entitled to a retirement allowance; or

4 (b) the date of commencement of an approved absence  
5 from active duty of not more than 30 days with an employer.

6 (2) An inactive member becomes an active member on the  
7 day he returns to active duty with an employer. Upon again  
8 becoming an active member, his retirement allowance, if any,  
9 must cease until he again becomes an inactive member.

10 NEW SECTION. Section 15. Termination of employment  
11 prior to retirement. (1) Except as provided in subsection  
12 (2), an active member shall withdraw the amount of his  
13 member contributions in lieu of all other benefits under the  
14 plan upon termination of employment prior to his  
15 retirement. If he has 8 years or more of service, the amount  
16 paid shall include regular interest, at a rate to be  
17 determined by the board, on the amount. If he has less than  
18 8 years of service, he shall receive only the amount paid  
19 through salary deductions without interest. If an active  
20 member's employment terminates by reason of his death, his  
21 beneficiaries are entitled to the benefits prescribed in  
22 [section 42].

23 (2) If a member has 8 years or more of creditable  
24 service before termination, he may keep his contributions on  
25 deposit and be eligible for a service retirement at age 50

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1 if he was hired on or before June 30, 1981, or at age 55 if  
2 he was hired after that date.

3 NEW SECTION. Section 16. Cessation of membership. A  
4 member shall cease to be a member upon the occurrence of the  
5 earlier of the following:

6 (1) the date he withdraws his member contributions in  
7 lieu of all other benefits under the plan; or

8 (2) the date of his death.

9 NEW SECTION. Section 17. Credited service to be  
10 cumulative. A member hired after June 30, 1981, is entitled  
11 to benefits for the entire period of his credited service  
12 and final average salary, regardless of the number of  
13 employers by whom he was employed or the number of periods  
14 of his employment, so that no duplication of credited  
15 service occurs.

16 NEW SECTION. Section 18. Military service. (1) A  
17 firefighter inducted into the armed forces of the United  
18 States has the option to:

19 (a) continue his payments into the account; or

20 (b) allow the board to make his payments for him  
21 during his military service, in which event he must repay to  
22 the account the full amount of the payments within 2 years  
23 of his return to active firefighter status.

24 (2) If a member chooses one of the options in  
25 subsection (1) and meets its requirements, he shall receive

1 credit for his service in the armed forces of the United  
2 States as if it were service as a firefighter.

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

21 (2) If a member has retired from active duty in the  
22 armed forces of the United States with normal service  
23 retirement benefits, he may not qualify his military service  
24 under subsection (1). However, a member who is serving or  
25 has served in the military reserves with the expectation of

1 receiving a military service pension may qualify his active  
2 military service under subsection (1) if his active duty in  
3 the armed forces of the United States is not more than 25%  
4 of the total of all his years of military service, including  
5 reserve and active duty time.

6 NEW SECTION. Section 20. Retirement account. On July  
7 1, 1981, there will be an account in the agency fund to be  
8 maintained on behalf of the plan. The state treasurer is the  
9 custodian of the account, subject to the exclusive  
10 administrative control of the board.

11 NEW SECTION. Section 21. Management of funds by  
12 department of administration. Except as otherwise provided  
13 in [sections 1 through 49], the department of  
14 administration, through the administrator and the board of  
15 investments, shall administer, invest, account for, and  
16 treat the funds deposited with it under [sections 1 through  
17 49] according to the rules governing the public employees'  
18 retirement system, insofar as these rules are not  
19 inconsistent with those promulgated and adopted by the  
20 board. The contributions of the state, employers, and  
21 members paid to the administrator under [sections 1 through  
22 49] may be commingled for investment purposes.

23 NEW SECTION. Section 22. Unfunded liabilities. (1)  
24 The legislature finds and declares that many cities  
25 operating under prior plans have excess and unfunded

1 liabilities, and the liabilities cannot be amortized by the  
2 percentage contributions provided in [sections 1 through  
3 49].

4 (2) The administrator shall, on or before October 1,  
5 1982, determine the excess and unfunded liability of each  
6 city participating in the plan created by [sections 1  
7 through 49]. The determination must be negotiated between  
8 each city and the administrator. Each city determined by the  
9 administrator to have an excess and unfunded liability under  
10 a prior plan that, as of July 1, 1981, is not funded by sums  
11 on deposit or funds available for deposit with the  
12 administrator shall pay an additional sum over a period of  
13 time to amortize its excess liability as determined by  
14 agreement between the city and the administrator.

15 (3) Each city determined by the administrator to be  
16 paying an amount in excess of the amount necessary to  
17 amortize its liabilities under the prior plan and under  
18 [sections 1 through 49] shall receive a credit in the  
19 accounts of the administrator for the excess payments.

20 (4) For each city with an unfunded liability, any  
21 portion of the member, employer, and state contributions  
22 that exceeds the amount necessary to maintain the current  
23 level of unfunded liability must be applied to the reduction  
24 of the unfunded liability.

25 (5) (a) For the purposes of this subsection, "economic



1 disaster area\* means a city that, in the year immediately  
 2 preceding its designation by the governor as an economic  
 3 disaster area, has lost 30% or more of the jobs available  
 4 therein.

5 (b) A city that is declared by the governor to be an  
 6 economic disaster area and is making payments under an  
 7 agreement to amortize its unfunded liability under  
 8 subsection (2) may not be required to continue these  
 9 payments after the date of the gubernatorial designation.  
 10 The state shall continue the city's payments to the  
 11 retirement system from the premium insurance taxes on risks  
 12 enumerated in 19-11-512.

13 (c) The governor shall annually review the economic  
 14 condition of a city that has been declared an economic  
 15 disaster area. If a city no longer qualifies under this  
 16 designation, the city shall assume the unfunded liability  
 17 payments, and the state payments shall cease.

18 NEW SECTION. Section 23. Actuarial valuation. The  
 19 board shall engage the services of a qualified actuary to  
 20 conduct an actuarial valuation of the plan in each  
 21 even-numbered year. It shall include the actuary's  
 22 determination of the financial condition of the plan, the  
 23 level of annual contributions required to maintain the plan  
 24 on an actuarially sound basis, and, if applicable, the level  
 25 of annual contributions required to amortize the excess and

1 unfunded liabilities described in [section 22]. A qualified  
 2 actuary is one who is a member of the American academy of  
 3 actuaries or of any organization considered by the board to  
 4 have similar standards.

5 NEW SECTION. Section 24. Transfer of dormant member  
 6 account. The board may, in its discretion, transfer member  
 7 contributions to the employer's account if the member's  
 8 contribution account has been dormant for a period of 10  
 9 years. No right of the member may be jeopardized by this  
 10 transfer, and the member contributions shall be transferred  
 11 back to the member's name upon his subsequent reinstatement  
 12 as a member.

13 NEW SECTION. Section 25. Member contributions. The  
 14 treasurer or other appropriate official of each employer  
 15 shall retain from the monthly compensation of each active  
 16 member hired after June 30, 1981, a sum equal to 7 1/2% of  
 17 his monthly compensation for his services as a firefighter  
 18 and 6% for a member hired on or before that date. The  
 19 monthly deduction from the salaries of firefighters must be  
 20 paid to the administrator for the purpose of paying the  
 21 retirement allowances of retired firefighters.

22 NEW SECTION. Section 26. Vesting and withdrawal of  
 23 contributions. A member is at all times fully vested in the  
 24 deductions made from his compensation as a member or as a  
 25 member of a prior plan standing to his credit and may, at

1 his discretion, withdraw the full amount of these deductions  
 2 upon his termination of employment according to [section 15]  
 3 and forfeit all rights and interest with respect to any  
 4 benefits that would otherwise become payable under the plan.

5 NEW SECTION. Section 27. Redeposit of amounts  
 6 withdrawn upon reinstatement. (1) Upon reinstatement to  
 7 active membership, a member may redeposit in the fund, in  
 8 one lump sum or in installments not to exceed 12 monthly or  
 9 24 semimonthly installments, an amount equal to the member  
 10 contributions that he withdrew plus an amount equal to the  
 11 interest that would have been credited to his account had he  
 12 not withdrawn his member contributions. If a member makes  
 13 this redeposit, his credited service shall be reinstated.

14 (2) If an active member does not elect to make the  
 15 redeposit provided for in subsection (1), he forfeits his  
 16 credited service for the period attributable to the  
 17 withdrawn member contributions.

18 NEW SECTION. Section 28. Payment of employer and  
 19 state contributions. Employer and state contributions shall  
 20 be paid to the administrator who shall, as soon as  
 21 practicable after their receipt, deposit them with the state  
 22 treasurer.

23 NEW SECTION. Section 29. State contribution. The  
 24 state shall make its contributions through the state auditor  
 25 out of the premium taxes on the insurance risks enumerated

1 in 19-11-512. These payments shall be made annually from the  
 2 gross premium taxes after deduction for cancellations and  
 3 returned premiums. The administrator shall notify the  
 4 auditor of the annual compensation paid to all active  
 5 members during the preceding year, and the state's  
 6 contribution is 18% of this compensation.

7 NEW SECTION. Section 30. Employer contribution. Each  
 8 employer shall make its contribution on behalf of members  
 9 through the city treasurer or other appropriate official  
 10 from money available to the city for this purpose. The  
 11 employer's contribution is 18% of the total monthly  
 12 compensation paid to all active members during the preceding  
 13 month and is payable monthly to the administrator.

14 NEW SECTION. Section 31. Taxing authority of  
 15 employers. (1) The payment of employer contributions is  
 16 considered a public purpose, and payments may be made from  
 17 the general fund of the governing body. In compliance with  
 18 1-2-112, whenever the demand for deposits of these  
 19 contributions cannot be met within the general taxing  
 20 authority and other revenue available to the city for that  
 21 purpose, the appropriate authority of the city may levy an  
 22 additional tax until the general taxing authority and other  
 23 revenue available for that purpose is sufficient to meet the  
 24 demand.

25 (2) "General taxing authority", as used in this

1 section, means that levy which the city may make under the  
2 all-purpose levy or under multiple-purpose levies if the  
3 city is using multiple-purpose levies.

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

7 NEW SECTION. Section 32. Other money credited as  
8 employer contributions. All gifts, bequests, and emoluments  
9 given to an employer or member for the benefit of the plan  
10 or because of any member's service as a firefighter, except  
11 when the member is specifically allowed by his employer to  
12 retain the money, and all money withheld from the monthly  
13 compensation of a member for violation of the rules of his  
14 employer shall be paid to the administrator. The  
15 administrator shall credit them to the fund and, as soon as  
16 practicable after their receipt, deposit them with the state  
17 treasurer. These amounts are employer contributions but are  
18 in addition to the amounts required by [section 30].

19 NEW SECTION. Section 33. Eligibility for service  
20 retirement. The following members are eligible for service  
21 retirement:

22 (1) a member hired after June 30, 1981, who has  
23 reached age 55 and has completed 8 years or more in the  
24 aggregate as a firefighter in any capacity or rank; and

25 (2) a member who has reached age 65 while in active

1 service, regardless of his number of years of service.

2 NEW SECTION. Section 34. Mandatory retirement. (1)  
3 An active member must retire on the first day of the month  
4 coinciding with or, if none coincides, immediately following  
5 the date on which he reaches age 65.

6 (2) A member who reaches mandatory retirement age may  
7 not be allowed creditable service for services rendered  
8 after the mandatory retirement date or to contribute to the  
9 retirement system after that date.

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

18 NEW SECTION. Section 36. Amount of service retirement  
19 allowance. (1) A member who is eligible under [subsection  
20 (1) of section 33] shall receive a service retirement  
21 allowance equal to 2% of his final average salary for each  
22 year of service up to 25 years plus 1% of his final average  
23 salary for each year of service past 25 years, up to a  
24 maximum of 10 years.

25 (2) A member who is eligible under [subsection (2) of

1 section 33] shall receive a service retirement allowance  
2 equal to one-half his final average salary.

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

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

23 NEW SECTION. Section 38. Eligibility for disability  
24 retirement. (1) Except as provided in subsection (2), if a  
25 member hired after June 30, 1981, is determined by the board

1 to be totally and permanently disabled, he is entitled to a  
2 disability retirement allowance, regardless of the length of  
3 his service, beginning on the first day of the month  
4 coinciding with or, if none coincides, immediately  
5 following the date on which he became totally and  
6 permanently disabled.

7 (2) A member who is totally and permanently disabled  
8 is ineligible for a disability retirement allowance if in  
9 the board's determination the injury occurred while:

- 10 (a) participating in criminal activity; or  
11 (b) working for compensation in an occupation other  
12 than firefighting.

13 NEW SECTION. Section 39. Amount of disability  
14 retirement allowance. (1) A member who is eligible under  
15 [section 38] before completing 25 years of service shall  
16 receive a disability retirement allowance equal to one-half  
17 his average final salary.

18 (2) A member who is retired under [section 38] and  
19 who, at the time of his injury or disability, was eligible  
20 at his option to retire under [subsection (1) of section 33]  
21 but had elected to serve and was serving additional years  
22 shall be paid for the additional years at the rate  
23 prescribed in [subsection (2) of section 36].

24 NEW SECTION. Section 40. Medical examination of  
25 disability retiree -- cancellation of allowance -- allowance

1 reduced by earnings. (1) (a) The board in its discretion  
 2 may require the recipient of a disability retirement  
 3 allowance to undergo a medical examination. The examination  
 4 shall be made by a physician or surgeon at the recipient's  
 5 place of residence or another place mutually agreed on.  
 6 Based on the results of the examination, the board shall  
 7 determine whether the recipient has the physical or mental  
 8 capacity to perform the duties required by his position. If  
 9 the board determines that the recipient is not incapacitated  
 10 or if the recipient refuses to submit to a medical  
 11 examination, his retirement allowance shall be canceled. The  
 12 board shall notify the recipient of this determination and  
 13 the cancellation of his allowance.

14 (b) The cancellation of a disability allowance because  
 15 a member is no longer incapacitated does not prejudice any  
 16 right of the member to a service retirement benefit.

17 (2) (a) If the recipient of a disability allowance  
 18 engages in a gainful occupation during any month, the amount  
 19 of his retirement allowance for that month shall be reduced  
 20 to an amount which, when added to the compensation earned by  
 21 him in that occupation, does not exceed the amount of his  
 22 monthly compensation at the time of his retirement.

23 (b) Benefit adjustments granted under the definition  
 24 of final compensation may not be included when making the  
 25 calculation in this section.

1 NEW SECTION. Section 41. Reinstatement upon  
 2 termination of disability allowance. (1) Any inactive  
 3 member whose disability retirement allowance is canceled  
 4 under [section 40] shall be reinstated to the position held  
 5 by him immediately before his retirement or to a position in  
 6 the same classification with duties within his capacity. The  
 7 board shall advise the employer that the disability  
 8 retirement allowance has been canceled and that the inactive  
 9 member is eligible for reinstatement to duty. The fact that  
 10 he was retired for disability may not prejudice any right to  
 11 reinstatement to duty that the inactive member may have or  
 12 claim to have.

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

24 NEW SECTION. Section 42. Survivorship benefits. (1) A  
 25 member's service or disability retirement allowance must be

1 paid first to the member during his lifetime and, upon his  
2 death, in the manner and to the persons designated in  
3 subsection (2).

4 (2) Except as provided in subsection (3), upon the  
5 death before retirement of a member hired after June 30,  
6 1981, his surviving spouse, if there is one, shall, as long  
7 as such spouse remains the surviving spouse, be paid from  
8 the fund a sum equal to one-half of the member's final  
9 average salary. If the member leaves one or more dependent  
10 minor children, then, upon his death if he leaves no  
11 surviving spouse or upon the death or remarriage of the  
12 surviving spouse, his surviving dependent minor children,  
13 collectively if there is more than one, shall receive the  
14 same monthly payments a surviving spouse would receive,  
15 until they reach age 18 or are married. If there is more  
16 than one such child, when each child reaches age 18 or  
17 marries, the pro rata payments to that child shall cease and  
18 shall be made to the remaining children until all the  
19 children have reached age 18 or are married. The payments  
20 shall be made to their appointed, qualified, and acting  
21 guardian for their use.

22 (3) The surviving spouse and dependent children are  
23 ineligible for survivorship benefits under subsection (2) if  
24 in the board's determination the death of the member  
25 occurred while he was:

1 (a) participating in criminal activity; or

2 (b) working for compensation in an occupation other  
3 than firefighting.

4 (4) In addition to the survivorship benefits provided  
5 in subsection (2), the board shall pay to a member's  
6 beneficiary a benefit, not exceeding \$750, to defray the  
7 funeral expenses of a member.

8 NEW SECTION. Section 43. Payment of retirement  
9 allowances. Retirement allowances under [sections 1 through  
10 49] shall be paid out of the fund and shall be determined as  
11 provided in [sections 36 and 39].

12 NEW SECTION. Section 44. Retirement allowances to be  
13 monthly and fixed. The retirement allowances granted under  
14 the provisions of [sections 1 through 49] shall be paid in  
15 monthly installments. They may not be increased or  
16 decreased, except as specifically provided in [sections 1  
17 through 49], or repealed or revoked except by the  
18 legislature.

19 NEW SECTION. Section 45. Correction of erroneous  
20 payments. If any change in records fraudulently made or any  
21 mistake in records inadvertently made results in any member,  
22 survivor, or beneficiary receiving more or less than he was  
23 entitled to receive, then, upon the discovery of the error,  
24 the board shall correct the error and adjust the payments to  
25 the member, survivor, or beneficiary in an equitable manner.

1        NEW SECTION. Section 46. Board's authority to refuse  
 2 to make payments. The board may revoke, refuse to grant, or  
 3 suspend a member's annuity for disability or death caused by  
 4 wrongful conduct. If the disability causing a member to  
 5 retire or the death of a member is directly or indirectly  
 6 caused by the member's immoral or intemperate conduct or  
 7 gross negligence, the board may refuse to grant, revoke, or  
 8 suspend the employer annuity.

9        NEW SECTION. Section 47. Exemption from taxes. Any  
 10 money received as a retirement allowance according to the  
 11 provisions of [sections 1 through 49] is exempt from any  
 12 state or municipal tax.

13        NEW SECTION. Section 48. Protection from legal  
 14 process -- unassignability. The benefits payable under  
 15 [sections 1 through 49] are not subject to the claims of any  
 16 creditor of a member, beneficiary, or survivor or to  
 17 attachment, garnishment, or other legal or equitable  
 18 process. No member, beneficiary, or survivor may alienate,  
 19 anticipate, commute, pledge, encumber, assign, or sell any  
 20 benefits.

21        NEW SECTION. Section 49. Supplement to certain  
 22 retirement allowances. The plan shall pay to each  
 23 firefighter retired before July 1, 1973, or his surviving  
 24 spouse and children a monthly retirement allowance of not  
 25 less than one-half the regular monthly salary paid to a

1 confirmed active firefighter of the city that last employed  
 2 him as a firefighter, as provided each year in the city  
 3 budget. In the case of volunteer firefighters, the  
 4 retirement allowance may not exceed \$75 a month.  
 5 Distribution of the funds provided for this purpose under  
 6 19-11-60S(1) shall be made as follows:

7        (1) At the beginning of each fiscal year, the  
 8 administrator shall request and the state auditor shall  
 9 issue from the earmarked revenue fund and deliver to the  
 10 administrator an amount certified to be equal to the total  
 11 annual dollar difference between what the retirees or their  
 12 surviving spouses or children received from the fund and  
 13 one-half of the salary paid by the respective city to a  
 14 confirmed active firefighter for the preceding fiscal year.

15        (2) The administrator shall use the funds to increase  
 16 the monthly retirement allowances of the retirees or their  
 17 surviving spouses or children to an amount equal to one-half  
 18 of the salary paid to a confirmed active firefighter in the  
 19 respective city for the preceding year.

20        Section 50. Section 19-9-1007, MCA, is amended to  
 21 read:

22        "19-9-1007. Supplement to certain pensions. (1) The  
 23 payment for each fiscal year to the police officers,  
 24 spouses, or minor children described in subsections (2)(a)  
 25 through (2)(c) may be not less than one-half of the base

1 salary paid in the previous calendar year in the appropriate  
 2 city or town to newly confirmed police officers, except that  
 3 for the fiscal year beginning July 1, 1979, all retirees and  
 4 their beneficiaries who received a supplement to their  
 5 retirement allowance on July 1, 1978, and are receiving an  
 6 allowance on July 1, 1979, shall receive a 3% increase in  
 7 their retirement allowance in lieu of any other increase.

8 (2) On or before April 1 of each year, the department  
 9 of administration shall make a report to the state auditor  
 10 including the following information:

11 (a) the names of all police officers who are receiving  
 12 payments from the plan as of the date of the report and were  
 13 receiving payments from a prior plan before July 1, 1975;

14 (b) the names of all spouses or minor children who are  
 15 receiving payments from the plan because of the death of a  
 16 police officer who was receiving payments from a prior plan  
 17 before July 1, 1975;

18 (c) the names of all spouses or minor children who are  
 19 receiving payments from the plan and who were receiving  
 20 payments from a prior plan before July 1, 1975, or in the  
 21 case of minor children, whose parent, the spouse of a police  
 22 officer, was receiving payments from a prior plan before  
 23 July 1, 1975;

24 (d) for the purpose of determining the base figure for  
 25 the computations set forth in subsection (3), the following

1 information relating to the base fiscal year commencing July  
 2 1, 1976:

3 (i) the amount of the payments made in the base fiscal  
 4 year to each police officer described in subsection (2)(a);

5 (ii) the amount of the payments made in the base fiscal  
 6 year to each spouse or minor child (or children) described  
 7 in subsection (2)(b) or (2)(c);

8 (iii) upon the death after April 18, 1977, of any  
 9 police officer on the retired list who was receiving  
 10 payments from a prior plan before July 1, 1975, and who is  
 11 survived by a spouse or minor children entitled to receive  
 12 payments from the plan, the amount which would have been  
 13 paid to an eligible spouse of such police officer had that  
 14 spouse been receiving payments in the base fiscal year;

15 (e) the base salary for the previous calendar year of  
 16 a newly confirmed police officer of each city or town  
 17 participating in the plan.

18 (3) The state auditor shall, upon receipt of the  
 19 report referred to in subsection (2), compute the difference  
 20 between each amount reported under subsections (2)(d)(i)  
 21 through (2)(d)(iii) and one-half the base salary for the  
 22 previous calendar year of a newly confirmed police officer  
 23 of the appropriate city or town. The difference shall be  
 24 paid by the state auditor out of the premium tax collected  
 25 on insurance sold in this state to insure against the risks



1 enumerated in 19-11-512~~(5)~~ to the administrator no later  
 2 than May 31 of each year. This payment is in addition to the  
 3 payment to be made by the state auditor under 19-9-702. The  
 4 administrator shall use the funds received under this  
 5 subsection to supplement the monthly payments to persons  
 6 described in subsections (2)(a) through (2)(c) so that the  
 7 requirements of subsection (1) are met.

8 (4) In addition to the payments made by the auditor as  
 9 provided in subsection (3), the auditor shall make annual  
 10 payments of \$100,000 on or before June 30 of each year until  
 11 the sum of \$500,000 has been paid to the administrator for  
 12 deposit in the retirement account. These payments are to be  
 13 made to reimburse the retirement account for funds advanced  
 14 to implement this section.

15 (5) If more than one minor child is entitled to  
 16 supplementary payments under this section by virtue of the  
 17 death of a common parent police officer, the minimum payment  
 18 to such minor children under this section shall be  
 19 determined as if there were one such minor child and the  
 20 supplementary payment shall be made to the minor children  
 21 collectively."

22 Section 51. Section 19-11-401, MCA, is amended to  
 23 read:

24 "19-11-401. Management of association. The management  
 25 of the fire department relief associations ~~in municipalities~~

1 ~~other-than-first--and-second-class-cities~~ is vested in the  
 2 boards of trustees, except as provided in 19-11-402 and  
 3 19-11-403."

4 Section 52. Section 19-11-403, MCA, is amended to  
 5 read:

6 "19-11-403. Investment of fund by board of  
 7 investments. ~~(1)~~ When the average yield on investments of  
 8 public retirement funds under the board of investments  
 9 exceeds by 1% in any fiscal year the average yield on  
 10 investments of the fund made pursuant to 19-11-402, the  
 11 surplus money in the fund shall be remitted to the state  
 12 treasurer for investment ~~by~~ under the direction of the board  
 13 of investments as ~~is~~ provided in ~~19-11-362-for-associations~~  
 14 ~~in-first--and-second-class-cities 17-6-204~~. The department  
 15 of community affairs shall advise the association of the  
 16 current yield on investments of public retirement funds.

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

19 ~~(a) 1 1/2 times the monthly benefit paid in the~~  
 20 ~~preceding month; or~~

21 ~~(b) \$5,000."~~

22 Section 53. Section 19-11-504, MCA, is amended to  
 23 read:

24 "19-11-504. Amount of special tax levy. ~~(1)~~ Whenever  
 25 ~~the total amount of the fund is less than 2% of the taxable~~

1 valuation of all taxable property within the limits of the  
2 city or town, the special tax levy shall be:

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

6 (b) an amount sufficient to provide a growth per year  
7 in the fund, considering all sources of income to the fund  
8 and the payment of obligations out of the fund, equal to the  
9 sum produced by 1 mill levied on the taxable valuation of  
10 all the taxable property in the city or town;

11 (2) The special tax levy shall be a fractional part of  
12 1 mill whenever:

13 (a) the total amount of the fund is less than 2% but  
14 more than 1% of the taxable valuation of all taxable  
15 property within the city or town; and

16 (b) the special tax levy of a fractional part of 1  
17 mill will produce sufficient revenue to cause the fund,  
18 considering all sources of income to the fund and all  
19 payments to be made out of the fund, to exceed 2% of the  
20 taxable valuation of all taxable property within the city or  
21 town;

22 (3) In cities of the third class, when ~~whenever~~ the  
23 fund contains an amount which is less than 2% of the taxable  
24 valuation of all taxable property in the city or town, the  
25 city council shall levy an annual special tax of not less

1 than 1 mill and not more than 4 mills on each dollar of  
2 taxable valuation of all taxable property within the city or  
3 town."

4 Section 54. Section 19-11-512, MCA, is amended to  
5 read:

6 "19-11-512. State auditor to pay association out of  
7 insurance premium taxes. (1) At the end of the fiscal year  
8 the state auditor shall issue and deliver the payment  
9 described in this subsection to the treasurer of every city  
10 or town of the first and second class which has a fire  
11 department relief association entitled by law to receive  
12 payments. The payment shall be for the use and benefit of  
13 the associations. It shall be paid out of the premium taxes  
14 on insurance risks enumerated in subsection (6) collected by  
15 the state auditor and shall be equal to 10% of the total  
16 annual compensation paid by the city or town to its paid or  
17 part-paid firefighters for services in the previous calendar  
18 year. The city clerk of the city or town shall certify in  
19 writing to the state auditor on or before April 1 of each  
20 year the amount paid by the city or town as compensation  
21 for services to paid or part-paid firefighters.

22 (2) When there is a disaster resulting in death or  
23 injury sufficient to draw the pensions of 10% of the active  
24 force and the fund, after receiving all moneys provided for  
25 in 19-11-501, 19-11-503, 19-11-504, and subsection (1) of

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1 ~~this section does not show at least the 1 mill growth~~  
 2 ~~referred to in 19-11-504, the treasurer of the association~~  
 3 ~~shall request and the state auditor shall issue and deliver~~  
 4 ~~an additional payment under the same conditions described in~~  
 5 ~~subsection (1). The payment shall be in an amount sufficient~~  
 6 ~~to cause at least the above mentioned 1 mill growth in the~~  
 7 ~~fund.~~

8 ~~(3) If a city is not entitled to receive a sum equal~~  
 9 ~~to 1 1/2 mills of its total taxable value under subsections~~  
 10 ~~(1) and (2), the association of the city shall receive its~~  
 11 ~~money in the manner provided in subsections (4) and (5) for~~  
 12 ~~cities of the third class and in the manner described in~~  
 13 ~~subsection (1).~~

14 ~~(4)(1) At the end of the fiscal year, the state~~  
 15 ~~auditor shall issue and deliver the warrant described in~~  
 16 ~~this subsection to the treasurer of every city or town~~  
 17 ~~except cities and towns of the first or second class, which~~  
 18 ~~has a fire department relief association entitled by law to~~  
 19 ~~receive payments. The warrant shall be for the use and~~  
 20 ~~benefit of the association. It shall be for an amount equal~~  
 21 ~~to 1 1/2 mills of the total taxable value of the city or~~  
 22 ~~town and shall be paid out of the premium taxes on insurance~~  
 23 ~~risks enumerated in subsection (6) (1) collected by the~~  
 24 ~~state auditor.~~

25 ~~(5)(2) If the payment provided for in subsection (4)~~

1 (1) is less than \$100, an additional payment shall be made  
 2 from the same tax moneys so that the total amount received  
 3 is \$100.

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

6 (a) insurance of houses, buildings, and all other  
 7 kinds of property against loss or damage by fire or other  
 8 casualty;

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

12 (c) insurance against loss or damage to motor vehicles  
 13 resulting from accident, collision, or marine and inland  
 14 navigation and transportation perils;

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

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

20 (f) insurance against loss or legal liability for loss  
 21 because of damage to property caused by the use of teams or  
 22 vehicles, whether by accident or collision or by explosion  
 23 of any engine, tank, boiler, pipe, or tire of any vehicle;  
 24 and

25 (g) insurance against theft of the whole or any part

1 of any vehicle."

2 Section 55. Section 19-11-513, MCA, is amended to  
3 read:

4 "19-11-513. Transfer of premium taxes to state  
5 treasury. The state auditor shall estimate the portion of  
6 premium taxes needed to make the payments required by this  
7 chapter and shall pay an amount equal to the estimate into  
8 the state treasury, to the credit of the earmarked revenue  
9 fund. ~~The state auditor shall pay the octuary fee as~~  
10 ~~required by 19-11-303.~~ Any balances remaining after such  
11 payments have been ordered shall be transferred to the  
12 general fund."

13 Section 56. Section 19-11-514, MCA, is amended to  
14 read:

15 "19-11-514. State treasurer to pay warrants. The state  
16 treasurer is hereby authorized and directed, upon the  
17 presentation to him of a warrant drawn pursuant to this  
18 chapter, to pay:

19 ~~{1}--in-the-case-of-a-municipality-other-than-a-city-of~~  
20 ~~the-first-or-second-classy-~~to the treasurer of the city or  
21 town, out of moneys in the earmarked revenue fund dedicated  
22 for such purpose, the amount of such warrant specified,  
23 which amount shall be paid by said city treasurer to said  
24 fire department relief association.

25 ~~{2}--in-the-case-of-a-city-of-the-first-or-second~~

1 ~~classy--to--the--board--of--investments--to--be--credited--to--the~~  
2 ~~account--of--the--fire--department--relief--association--out--of~~  
3 ~~the--money--in--the--earmarked--revenue--fund--dedicated--for--such~~  
4 ~~purposey--the--amount--of--the--warrant."~~

5 Section 57. Section 19-11-606, MCA, is amended to  
6 read:

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

24 (2) Effective January 1, 1976, each association shall  
25 pay to the firefighters retired before July 1, 1973, or

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1 their surviving spouses and children a monthly pension of  
 2 not less than one-half the regular monthly salary paid to a  
 3 confirmed active firefighter of that city, as provided each  
 4 year in the budget of that city. In the case of volunteer  
 5 firefighters, the pension may not exceed \$75 per month.  
 6 Distribution of the funds provided for this purpose under  
 7 subsection (1) shall be made as follows:

8 (a) At the beginning of each fiscal year the treasurer  
 9 of each association shall request and the state auditor  
 10 shall issue from the earmarked revenue fund and deliver, in  
 11 the case of a municipality other than a city of the first or  
 12 second class, to the treasurer of the respective city or  
 13 town or, in the case of a city of the first or second class,  
 14 to the board of investments to be credited to the account of  
 15 the fire department relief association an amount certified  
 16 to be equal to the total annual dollar difference between  
 17 what the retirees or their surviving spouses and children  
 18 received from the fund and one-half of the salary paid by  
 19 the respective city or town to a confirmed active  
 20 firefighter for the fiscal year just preceding. The state  
 21 auditor shall, at the same time, report to the treasurer of  
 22 the appropriate association the amount of any payment  
 23 delivered to the board of investments.

24 (b) The treasurer of a city or town receiving funds  
 25 shall immediately disburse them to the treasurer of the

1 respective association.

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

7 Section 58. Section 19-12-301, MCA, is amended to  
 8 read:

9 "19-12-301. Fire insurance premium tax to be paid into  
 10 fund. The state auditor and ex officio commissioner of  
 11 insurance shall annually deposit in the volunteer  
 12 firefighters' fund a sum equivalent to 5% of the premium  
 13 taxes collected from insurers authorized to effect insurance  
 14 against risks enumerated in 19-11-512, computed after the  
 15 amounts provided for by 19-11-512 ~~and [section 29]~~ have  
 16 first been deducted. The moneys shall be used for the  
 17 payment of claims and administrative costs as provided in  
 18 this chapter."

19 Section 59. Repealer. Sections 19-11-301 through  
 20 19-11-303, MCA, are repealed.

21 Section 60. Effective date. (1) Section 5 is effective  
 22 on passage and approval.

23 (2) Sections 1 through 49, excluding section 5, are  
 24 effective July 1, 1981.

-End-