

## LEGISLATIVE BILL 531

Approved by the Governor May 26, 1983

Introduced by DeCamp, 40

AN ACT relating to cities of the first class; to establish a retirement system for firefighters as prescribed; to create funds; to authorize a levy; to exclude certain contributions from budget limitation provisions; to provide an operative date; to repeal pension provisions; and to repeal sections 35-201 to 35-216, Revised Statutes Supplement, 1982.

Be it enacted by the people of the State of Nebraska,

Section 1. Except as provided in section 20 of this act, sections 1 to 19 of this act shall apply to all firefighters of a city of the first class.

Sec. 2. For the purposes of sections 1 to 19 of this act, unless the context otherwise requires:

(1) Regular interest shall mean the net rate of interest earned each calendar year commencing January 1, 1984, as determined by the retirement committee in conformity with actual and expected earnings on its investments;

(2) Regular pay shall mean the salary of a firefighter at the date such firefighter elects to retire;

(3) Salary shall mean the base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the firefighters' contributions picked up by the city as provided in subsection (2) of section 5 of this act;

(4) Retirement committee shall mean the retirement committee created pursuant to section 15 of this act;

(5) Retirement value shall mean the accumulated value of the firefighter's employee account and employer account;

(6) Group annuity contract shall mean the contract or contracts issued by one or more life insurance companies or designated trust to the retirement committee in order to provide the benefits

described in sections 1 to 19 of this act. Annuity conversion rates contained in any such contract shall be specified on a sex neutral basis; and

(7) Straight life annuity shall mean an ordinary annuity payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind.

Sec. 3. A firefighter shall be credited with all years of his or her service after August 7, 1965, for the purpose of determining vested retirement benefits under sections 1 to 19 of this act.

Sec. 4. Commencing on January 1, 1984, each city of the first class having a paid fire department shall keep and maintain a Firefighters' Retirement System Fund for the purpose of investing payroll deductions and city contributions to the retirement system established pursuant to sections 1 to 19 of this act. Upon the passage of sections 1 to 19 of this act all of the contributions made by a firefighter under section 35-203.01 and interest accrued at five per cent per annum on such contributions prior to the operative date of this act shall be transferred to the firefighter's employee account. Regular interest shall begin to accrue on the contributions transferred into the fund. Such funds shall be invested in the manner prescribed in section 17 of this act.

Sec. 5. (1) Each firefighter participating in the retirement system established pursuant to sections 1 to 19 of this act shall contribute to the retirement system a sum equal to six and one half per cent of his or her salary. Such payment shall be made by regular payroll deductions from his or her periodic salary and shall be credited to his or her employee account on a monthly basis. Each such account shall also be credited with regular interest.

(2) Each city of the first class with firefighters participating in a retirement system established pursuant to sections 1 to 19 of this act shall pick up the firefighters' contributions required by this section for all compensation paid on or after January 1, 1984, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the United States Internal Revenue Code, except that the city shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the United States Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The city shall pay the employee contributions from the same source of funds which is used in paying earnings to the employee. The city shall

pick up the employee contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase.

Sec. 6. (1) Each city of the first class with firefighters participating in a retirement system established pursuant to sections 1 to 19 of this act shall contribute to the retirement system a sum equal to thirteen per cent of each such participating firefighter's periodic salary. Such payment shall be credited to his or her employer account on a monthly basis. Each such account shall also be credited with regular interest.

(2) Each such city shall contribute any additional amounts necessary to fund retirement or other retirement plan benefits not provided by employee contributions or city contributions to the employer account required by subsection (1) of this section. Such additional contributions shall be accumulated in an unallocated employer account of the Firefighters' Retirement System Fund and used to provide the excess benefits, if any, specified in sections 8, 10, 11, and 12 of this act. All funds committed by the city to the funding of a firefighter pension system on the operative date of this act that are not transferred to the firefighters employee accounts shall be transferred to the unallocated employer account.

Sec. 7. At least once every five years, the retirement committee shall cause the liability of the Firefighters' Retirement System Fund to be evaluated by an actuary who is a member of the American Academy of Actuaries. Such actuary shall report to the retirement committee and the city as to the soundness and solvency of the fund in relation to projected plan liabilities and the amount of annual deposits by the city which would be sufficient to provide for such liabilities. For any city for which the most recent actuarial report shows that the assets of the unallocated employer account are sufficient to provide for the projected plan liabilities and that additional contributions to this account will not be required no further actuarial evaluation shall be required.

Sec. 8. (1) At any time before the retirement date, the retiring firefighter may elect to receive his or her pension benefit either in the form of a straight life annuity or any optional form of annuity benefit specified in the group annuity contract. The retiring firefighter may further elect to defer the date of the first payment to the first day of any specified month prior to age seventy. In any case, the amount of the pension benefit shall be the amount purchased or otherwise provided by the retirement value as of the date of the first payment.

(2) For all firefighters employed on January 1, 1984, the amount of the pension benefit shall not be less than the following amounts:

(a) If retirement occurs following age fifty-five with twenty-one years of service, fifty per cent of regular pay;

(b) If retirement occurs on or after age fifty-five with less than twenty-one years of service, such firefighter shall receive a pension of at least fifty per cent of the salary he or she was receiving at the time of retirement multiplied by the ratio of the years of service to twenty-one;

(c) At the death of any such retired firefighter, the same rate of pension, as is provided for in this section, shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse shall remain unmarried and, in case there be no surviving spouse, then the minor children, if any, of such deceased firefighter, shall be paid such pension during their minority to the age of eighteen years, except that as soon as a child of such deceased firefighter shall become eighteen years of age, such pension as to such child shall cease; or

(d) In the event a retired firefighter or his or her surviving beneficiaries die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the employee's account, including interest, the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's duly qualified personal representative, except that if the difference is less than five hundred dollars, the city may pay the same to such claimant or claimants as the retirement committee, in its discretion, shall determine to be entitled to the funds.

(3) Any retiring firefighter whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value in lieu of annuity.

Sec. 9. (1) A firefighter of a city of the first class may:

(a) Retire or be retired and receive a pension benefit based on his or her full retirement value upon the attainment of age fifty-five; or

(b) Retire or be retired as a result of disability, as determined under section 12 of this act, at any age.

(2) A firefighter who is eligible to retire pursuant to subdivision (1) (a) of this section but does

not, shall continue to contribute to his or her employee account and the city shall continue to contribute to its employer account.

(3) The first of the month immediately following the last day of work shall be the retirement date.

Sec. 10. When prior to retirement, any firefighter participating in the retirement system established pursuant to sections 1 to 19 of this act shall die other than in the line of duty, the entire retirement value shall be payable to the beneficiary specified by the deceased firefighter prior to his or her death or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value may be received by the beneficiary in the form of a single lump-sum payment, straight life annuity, or any other optional form of benefit specified in the group annuity contract.

If such benefits are payable in the form of annuity benefits, and if any firefighter employed by such city as a member of its paid fire department on January 1, 1984, and any firefighter reemployed thereafter who while employed in such department entered military service and is still in military service, shall die other than in the line of duty after becoming fifty years of age and before electing to retire, and after serving in the paid fire department of such city for at least twenty-one years, then a pension of at least twenty-five per cent of his or her regular pay as defined in section 2 of this act under a straight life annuity shall be paid to the surviving spouse or minor children of such deceased firefighter.

In the event the surviving spouse or minor children of such deceased firefighter dies before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the employee's account, including interest, the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's duly qualified personal representative, except that if the difference is less than five hundred dollars, the city may pay the same to such claimant or claimants as the retirement committee, in its discretion, shall determine to be entitled to the funds.

To the extent that the retirement value at the date of death exceeds the amount required to purchase the specified pension, the excess will be applied to increase the amount of the pension benefit. In the event that the pension benefit is payable, the retirement value of the firefighter's retirement account

who died after the age of fifty shall be retained by the city.

Sec. 11. When prior to retirement, any firefighter participating in the retirement system established pursuant to sections 1 to 19 of this act shall die in the line of duty or in case death is caused by or is the result of injuries received while in the line of duty, the entire retirement value shall be payable to the beneficiary specified by the deceased firefighter prior to his or her death, or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value may be received by the beneficiary in the form of a single lump-sum payment, straight life annuity, or any other optional form of benefit specified in the group annuity contract. For a firefighter who is survived by a spouse or minor children, a retirement pension of fifty per cent of regular pay shall be paid to the surviving spouse, or upon his or her remarriage or death, to the minor child or children during such child's or children's minority subject to deduction of the amounts paid as workmen's compensation benefits on account of death, as provided in section 13 of this act.

In the event the surviving spouse or minor children of such deceased firefighter dies before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the employee's account, including interest, the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's duly qualified personal representative, except that if the difference is less than five hundred dollars, the city may pay the same to such claimant or claimants as the retirement committee, in its discretion, shall determine to be entitled to the funds.

To the extent that the retirement value at the date of death exceeds the amount required to purchase the specified retirement pension, reduced by any amounts paid as workmen's compensation benefits, the excess shall be applied to increase the amount of the pension benefit. In the event that the specified retirement pension is payable, the retirement value shall be retained by the city.

Sec. 12. In case any firefighter shall become permanently and totally disabled from accident or other cause, while in the line of duty, and such firefighter because of such disability is unable to resume the duties he or she was performing at the time of injury, such firefighter shall forthwith be placed upon the roll of pensioned firefighters at the regular retirement

pension of fifty per cent of regular pay, as defined in section 2 of this act. In case of temporary total disability of a firefighter received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it shall be ascertained by the city within twelve months that such disability has become permanent, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of total and permanent disability. All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under Chapter 48, article 1. Total payments to a disabled firefighter, in excess of amounts paid as workmen's compensation benefits, shall not be less than the retirement value at the date of disability.

Sec. 13. No firefighter shall be entitled during any period of temporary disability to receive in full both his or her salary and his or her benefits under Chapter 48, article 1. All Nebraska workmen's compensation benefits shall be payable in full to such firefighter as provided in Chapter 48, article 1, but all amounts paid by the city or its insurer under sections 1 to 19 of this act to any disabled firefighter entitled to receive a salary during such disability shall be considered as payments on account of such salary and shall be credited thereon. The remaining balance of such salary, if any, shall be payable as otherwise provided in sections 1 to 19 of this act.

Sec. 14. In the event a firefighter quits or is discharged, the firefighter may request and receive as a lump sum all of the contribution he or she has made toward his or her employee account, including interest earned prior to January 1, 1984, at five per cent per annum, and including regular interest earned from January 1, 1984. Such firefighter, if vested, may, in lieu thereof, receive a deferred pension benefit in an amount purchased by the retirement value at the date of retirement. The retirement value shall consist of the accumulated value of the firefighter's employee account, less any lump-sum distributions received prior to retirement, together with a vested percentage of the firefighter's employer account plus regular interest from the date of termination to the date of retirement. The retirement value of a firefighter who is employed on January 1, 1984, shall include, when he or she quits, is discharged from the city, or retires, an amount equal to the employee's contributions without interest that were made prior to January 1, 1984, subject to the vesting schedule. The vesting schedule is as follows:

(1) If the terminating firefighter has been a member of the system for less than four years, such vesting shall be nil; and

(2) If the terminating firefighter has been a member of the paid department of the city for at least four years, such vesting percentage shall be forty per cent. Such vesting percentage shall be fifty per cent after five years, sixty per cent after six years, seventy per cent after seven years, eighty per cent after eight years, ninety per cent after nine years, and one hundred per cent after ten years.

The deferred pension benefit shall be payable on the first of the month immediately following his or her fifty-fifth birthday. At the option of the terminating firefighter, such pension benefit may be paid as of the first of the month after such member attains the age of fifty. Such election may be made by the firefighter anytime prior to the payment of the pension benefits.

In the event that the terminating firefighter shall not be credited with one hundred per cent of his or her employer account, the remainder shall be deposited in the unallocated employer account.

Sec. 15. A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to sections 1 to 19 of this act. The governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee.

Sec. 16. Each retirement committee established pursuant to section 15 of this act shall consist of six members of which four members shall be selected by the active paid firefighters excluding firefighters identified in section 20 of this act. Two members shall be designated by the city council. The members who are not participants in such retirement system shall have a general knowledge of retirement plans. Members of the governing body of such city, active members of the fire department, and members of the general public may serve on the retirement committee. The committee members shall be appointed to four-year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his or her predecessor. Members of the retirement committee shall receive no salary and shall not be compensated for expenses.

Sec. 17. The funds of the retirement system shall be invested by the retirement committee. The city or committee shall contract with an insurance company, trust company, or other financial institution including, but not limited to, brokerage houses, investment managers, savings and loan associations, banks, credit unions, or Farmers Home Administration or Veterans'



Administration approved lenders. Such funds shall be invested pursuant to the policies established by the Nebraska Investment Council.

Sec. 18. It shall be the duty of the retirement committee to:

(1) Provide each employee a summary of plan eligibility requirements and benefit provisions;

(2) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive;

(3) Make available for review an annual report of the system's operations describing both (a) the amount of contributions to the system from both employee and employer sources and (b) an identification of the total assets of the retirement system; and

(4) Have an analysis made of the investment return that has been achieved on the assets of the retirement system administered by the committee. Such analysis shall be prepared as of January 1, 1989, and each five years thereafter. The analysis shall be prepared by an independent private organization which has demonstrated expertise to perform this type of analysis and which is unrelated to any organization offering investment advice or which provides investment management services to the retirement system.

Sec. 19. In order to provide the necessary amounts to pay for or fund a pension plan established under sections 1 to 19 of this act, the mayor and council may make a levy in addition to the multiple levies or the all-purpose and exclusive levy which such city is authorized by law to make.

Sec. 20. (1) All cities of the first class having a paid fire department shall pension all firefighters of the paid fire department who were serving as such on August 7, 1965, and who did not elect coverage under the provisions of sections 35-204 to 35-215 as they existed prior to the operative date of this act, whenever such firefighters shall have first served in such fire department for the period of twenty-one years and shall elect to retire from active service and go upon the retired list.

(2) Such pension shall be paid by the city in the same manner as firefighters upon the active list are paid. Such pension shall be at least fifty per cent of the amount of salary such retiring firefighter is receiving at the time he or she goes upon such pension list.

(3) Any such firefighter who retires on or after age fifty-five with less than twenty-one years of service shall receive a pension of at least fifty per cent of the salary he or she was receiving at the time of his or her retirement multiplied by the ratio of the

years of service to twenty-one.

(4) At the death of any such retired firefighter, the same rate of pension, as is herein provided for, shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse shall remain unmarried and, in case there be no surviving spouse, then the minor children, if any, of such deceased firefighter, shall be paid such pension during their minority to the age of eighteen years, except that as soon as a child of such deceased firefighter shall become eighteen years of age, such pension as to such child shall cease.

(5) Firefighters subject to subsection (1) of this section shall be subject to sections 10, 11, 12, and 13 of this act but shall be exempt from sections 5, 6, 8, 9, and 14 of this act.

Sec. 21. After August 7, 1965, every firefighter subject to the provisions of sections 35-201 to 35-203 as they existed prior to the operative date of this act, shall contribute to the city an amount equal to five per cent of his or her salary until he or she shall be entitled to retire or otherwise become eligible for a pension. No such firefighter continuing in the employment of the city as a member of such department after becoming eligible to retire shall be required to make any further contribution. Any such firefighter whose employment shall terminate, whether by discharge or otherwise, prior to the time he or she shall become entitled to a pension, and who shall have made contributions from his or her salary as provided in this section shall, upon demand, be reimbursed by the city for the amount of such contributions plus interest at five per cent per annum.

Sec. 22. Nothing in this act shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in sections 35-201 to 35-216, as they exist immediately prior to the operative date of this act, to receive such pension or other benefits in all respects the same as if such sections remained in full force and effect.

Sec. 23. In the event that after four or more years of employment a firefighter terminates his or her employment for the purpose of becoming a firefighter employed by another first-class city in Nebraska, and such new employment commences within ninety days, such firefighter shall be entitled to transfer to the Firefighters' Retirement System Fund of the city by which he or she is newly employed, the full amount of his or her contribution and his or her vested portion of the city's contribution at the time of termination, together with regular interest accrued thereon. The transferred funds shall be administered by the

retirement committee of the city to which transferred. For the purpose of applying the vesting schedule in section 14 of this act to contributions made following the commencement of new employment, such firefighter shall be deemed a new employee.

Sec. 24. For purposes of subdivision (2) of section 77-3424, new program shall include all contributions of a city of the first class to a retirement system established pursuant to sections 1 to 19 of this act, for one calendar year after January 1, 1984.

Sec. 25. This act shall become operative on January 1, 1984.

Sec. 26. That sections 35-201 to 35-216, Revised Statutes Supplement, 1982, are repealed.