

LEGISLATIVE BILL 408

Passed over the Governor's veto May 29, 1987.

Introduced by Harris, 27; Landis, 46; Warner, 25;
McFarland, 28; Marsh, 29

AN ACT relating to cities of the primary class; to amend sections 15-1001.01, 15-1007.02, 15-1007.05, and 15-1013.02, Revised Statutes Supplement, 1986; to change provisions relating to pensions for firefighters and police officers; to change certain benefits as prescribed; to authorize creation of a retirement committee; to provide powers and duties; to harmonize provisions; to eliminate provisions relating to pensions for firefighters and police officers; to provide operative dates; and to repeal the original sections, and also sections 15-1003, 15-1004, 15-1007.03, 15-1009, 15-1011, 15-1013, 15-1013.03 to 15-1015, 15-1016, and 15-1018 to 15-1021, Reissue Revised Statutes of Nebraska, 1943, sections 15-1001, 15-1002, 15-1005 to 15-1007.01, 15-1007.04, 15-1008, and 15-1013.01, Revised Statutes Supplement, 1986, sections 15-1001.01, 15-1007.02, 15-1007.05, and 15-1013.02, Revised Statutes Supplement, 1986, as amended by sections 1, 2, 3, and 4, respectively, of this legislative bill, and sections 5 to 8 of this legislative bill.

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

Section 1. That section 15-1001.01, Revised Statutes Supplement, 1986, be amended to read as follows:

15-1001.01. As used in sections 15-1001 to 15-1018, unless the context otherwise requires:

(1) Regular pay shall mean the average salary of a firefighter or police officer for the three years preceding the date such firefighter or police officer elects to retire or his or her death, whichever is earlier;

(2) Regular interest shall mean the rate of interest earned each calendar year, commencing January 1, 1976, as determined by the city in conformity with actual and expected earnings on investment of the fund created by section ~~15-1016~~ 9 of this act. Whenever such

interest is required to be credited to any firefighter or police officer under the provisions of sections 15-1001 to 15-1018, such interest during any calendar year or portion of such year shall be based upon his or her accumulated contributions on January 1 of that year;

(3) Salary shall mean the base rate of pay, excluding overtime pay, college pay, callback pay, holiday pay, clothing allowances, and other such benefits; and

(4) Earned fringe benefits shall mean all forms of compensation, excluding salary, to which a firefighter or police officer would become entitled by reason of being a full-time employee of the city and which are not earned by the working of hours or periods in addition to or different from the normal or usual work periods.

Sec. 2. That section 15-1007.02, Revised Statutes Supplement, 1986, be amended to read as follows:

15-1007.02. (1) Every firefighter and police officer first employed by the city after September 1, 1981, and every firefighter and police officer employed by the city on September 1, 1981, who files the appropriate election as provided for under section 15-1007.03 shall, at the time of retirement or death, be paid a sum equal to all contributions made by such firefighter or police officer to the city pursuant to sections 15-1007 and 15-1007.01 prior to the twenty-one years immediately preceding the retirement or death of the firefighter or police officer or age fifty-five, whichever event first occurs, plus regular interest on such contributions, less any such contributions and interest which have previously been returned to such firefighter or police officer.

(2) Every such firefighter and police officer who is less than fifty-five years of age and has twenty-one or more years of prior service shall have the option of receiving, on January 2 of each year, a sum equal to all contributions made by such firefighter or police officer to the city under sections 15-1007 and 15-1007.01 prior to the twenty-one years immediately preceding such date, less any such contributions and regular interest on such contributions which have previously been returned to such firefighter or police officer. To exercise the option provided in this subsection, the firefighter or police officer shall file with the city, within fifteen days prior to each January 2 on forms provided by the city, a request for the return of such contributions and interest.

Sec. 3. That section 15-1007.05, Revised Statutes Supplement, 1986, be amended to read as follows:

15-1007.05. (1) Every firefighter or police officer employed by a primary-class city on April 11, 1984, shall have thirty days from such date within which to file with the city, on forms provided by such city, a written notice of an election to make contributions and receive benefits at the highest of the alternative percentages for such contributions and benefits set forth in sections 15-1001 to 15-1015.

(2) In addition to filing the notice of election pursuant to subsection (1) of this section, every such firefighter or police officer shall, at the time of filing such election, assign to the city all of the accumulated contributions made by such firefighter or police officer prior to the filing of such election, together with all regular interest earned thereon, including all contributions from compensation in excess of salary as defined in section 15-1001.01. If, pursuant to an order by a court of competent jurisdiction, any portion of such accumulated contributions and interest has been refunded by the city to such firefighter or police officer prior to the filing of the notice of election, such firefighter or police officer shall pay to the city at the time of the filing of his or her notice of election an amount equal to the total of the court-ordered refunded contributions and interest even though such court may have ordered that fees and costs be deducted from such total refunded contributions and interest.

(3) Upon filing the notice of election and making the assignments and payments as required by subsections (1) and (2) of this section, the firefighter or police officer shall receive a pension service credit for the period of his or her employment prior to the filing of such notice of election based upon the highest of the alternatives for benefits under sections 15-1001 to 15-1015 and shall make contributions and receive future service benefits at the highest of the alternative percentages for contributions and benefits as provided in sections 15-1001 to 15-1015.

(4) If, pursuant to an order by a court of competent jurisdiction, any portion of the firefighter's or police officer's contributions and interest assigned or paid to the city pursuant to subsection (2) of this section is refunded by the city to such firefighter or police officer after the filing of his or her notice of election, such firefighter or police officer shall,

within thirty days of the date such refund is made by the city, pay to the city an amount equal to the total of the court-ordered refunded contributions and interest even though such court may have ordered that fees and costs be deducted from such total refunded contributions and interest. Any firefighter or police officer who fails to make the payment to the city required by this subsection shall be forthwith returned to the status such firefighter or police officer would have maintained had he or she not filed the notice of election or made the assignments or payments under subsections (1) and (2) of this section.

(5) All sums either assigned or paid by a firefighter or police officer to the city pursuant to this section shall be deposited by the city in the fire and police pension fund created by such city pursuant to section ~~15-1016~~ 9 of this act, and such firefighter or police officer be given due credit therefor.

Sec. 4. That section 15-1013.02, Revised Statutes Supplement, 1986, be amended to read as follows:

15-1013.02. Any firefighter or police officer of a primary-class city who terminates employment, either voluntarily or involuntarily, for reasons other than death or disability before becoming eligible to retire shall:

(1) Receive the lump-sum return of accumulated contributions with regular interest to the date of termination if he or she has less than ten years of service; or

(2) If he or she has ten years or more of service but has not attained age ~~fifty~~ fifty-five, have the option to receive:

(a) The lump-sum return of accumulated contributions with regular interest to the date of termination and a reduced paid-up deferred annuity, if any, equal to the deferred annuity to commence at age fifty-five reduced by the portion of these benefits that are actuarially equivalent to the amount of the employee contributions and interest withdrawn. Actuarial equivalence shall be based on procedures and assumptions recommended by an actuary who is a member of the American Academy of Actuaries and authorized by the administering board; or

(b) A deferred annuity to commence at age fifty-five on a regular basis or at age fifty or the date of termination, whichever is later, on an actuarially equivalent basis. ~~or~~

(3) Receive a deferred annuity to commence at

age fifty-five on a regular basis or at age fifty on an actuarially equivalent basis if he or she has ten years or more of service and has attained the age of fifty. In this event the accumulated contributions of the member may not be withdrawn from the system. The deferred annuity to commence at age fifty-five shall be computed as either fifty-four per cent or fifty-eight per cent of his or her regular pay at the date of termination multiplied by the ratio of the years of his or her service at the date of termination to twenty-one, such ratio not to exceed one. In the event of the death of a terminated member during the deferred period, the accumulated contributions with regular interest to the date of death shall be paid as a lump-sum benefit.

Sec. 5. A retirement committee shall be established to advise the city with regard to the general operation of the pension system established pursuant to Chapter 15, article 10, and sections 5 to 9 of this act. The governing body of the city shall be responsible for the general administration of the pension system unless specific functions or all functions with regard to the administration of the pension system are delegated, by ordinance, to the retirement committee.

Sec. 6. The retirement committee established pursuant to section 5 of this act shall consist of six members. Two members shall be designated by the city council, two members shall be elected by secret ballot by the active paid police officers of the city, and two members shall be elected by secret ballot by the active paid firefighters of the city. The members who are not participants in the retirement system shall have a general knowledge of retirement plans. Members of the governing body of the city may serve on the retirement committee. The committee members shall have four-year terms, except that of the initial members, one representative of each group shall have a two-year term. Any vacancy shall be filled by the group which the member had represented for the remainder of the term. Members of the retirement committee shall be reimbursed for actual and necessary expenses incurred in carrying out their duties as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 7. The retirement committee shall be consulted and act as an advisory committee with regard to all investments of the funds of the pension system and all sums credited to the fire and police pension fund established pursuant to section 9 of this act. The city, after consulting with the retirement committee,

may 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 federal Farmers Home Administration or Veterans' Administration approved lenders. The funds shall be invested in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the insurance company, trust company, or other financial institution contracted with has special skills or is named on the basis of representations of special skills or expertise, such company or institution shall be under a duty to use such skills.

Sec. 8. It shall be the duty of the city 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 except that such statement need not be provided more than once in any twelve-month period;

(3) Make available for review (a) an annual report of the system's operations describing (i) the amount of contributions to the system from both employee and employer sources, (ii) an identification of the total assets of the pension system and amounts credited to the fire and police pension fund, and (iii) the amount of benefit payments and other deductions made from the system and the fire and police pension fund and (b) any actuarial reports applicable to the pension system;

(4) Review all claims for benefits from the pension system and, at least once a month, submit a written recommendation of approval or denial of each such claim to the retirement committee for review by the committee; and

(5) Have an analysis made of the investment return that has been achieved on the assets of the pension system administered by the city. The 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 pension system.

Sec. 9. Any city of the primary class may establish a fire and police pension fund. Such city may

anticipate its liability for future pension payments on an actuarial basis and, in order to equalize the tax burden over a period of years, may levy and collect taxes in each fiscal year sufficient to meet current needs and equalize the future payments. The tax shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by the city. The tax so levied and collected, together with contributions made by firefighters and police officers, shall be credited to the fund. Any unexpended balance remaining in the fund at the close of the fiscal year shall be reappropriated for the ensuing year. Pension payments required by law shall be a general obligation of the city and may be made out of, but not limited to, the fund. The unexpended balance of any fire and police pension fund established by a city of the primary class existing on the operative date of this section shall be transferred on such date to the fund authorized in this section.

Sec. 10. Nothing in sections 1 to 9 of this act, the repeal of any sections in Chapter 15, article 10, or the unilateral action of any city of the primary class shall in any manner diminish the right of any person receiving or entitled to receive, now or in the future, pension or other benefits provided for in Chapter 15, article 10, as the sections of such article existed immediately prior to the repeal of any such sections, to receive such pension or other benefits in all respects the same as if such repealed sections remained in full force and effect.

Sec. 11. Section 13 of this act shall become operative on September 1, 1987. The remaining sections shall become operative on their effective date.

Sec. 12. That original sections 15-1001.01, 15-1007.02, 15-1007.05, and 15-1013.02, Revised Statutes Supplement, 1986, and also section 15-1016, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 13. That sections 15-1003, 15-1004, 15-1007.03, 15-1009, 15-1011, 15-1013, 15-1013.03 to 15-1015, and 15-1018 to 15-1021, Reissue Revised Statutes of Nebraska, 1943, sections 15-1001, 15-1002, 15-1005 to 15-1007.01, 15-1007.04, 15-1008, and 15-1013.01, Revised Statutes Supplement, 1986, sections 15-1001.01, 15-1007.02, 15-1007.05, and 15-1013.02, Revised Statutes Supplement, 1986, as amended by sections 1, 2, 3, and 4, respectively, of this legislative bill, and sections 5 to 8 of this legislative bill are repealed.