

HOUSE BILL NO. 231

INTRODUCED BY R. BRODEHL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR FIRE DEPARTMENTS IN CITIES AND TOWNS; REMOVING THE REQUIREMENT THAT CERTAIN CITIES AND TOWNS HAVE PAID FIRE DEPARTMENTS; ALLOWING A CITY OR TOWN TO CHOOSE HOW IT PROVIDES FIRE PROTECTION; REMOVING REFERENCES TO CITY OR TOWN CLASSIFICATION WITH REGARD TO FIRE DISTRICTS AND FIREFIGHTER RETIREMENT; AND AMENDING SECTIONS 7-33-2101, 7-33-2102, 7-33-2104, 7-33-2120, 7-33-2125, 7-33-2128, 7-33-4101, 7-33-4102, 7-33-4109, 7-33-4128, 7-33-4130, 19-13-102, 19-13-104, 19-13-210, AND 19-17-102, MCA."

WHEREAS, first-class cities are required by the State of Montana to provide a paid fire department without volunteers; and

WHEREAS, second-class cities are required by the State of Montana to provide a paid fire department with an option for a supplementary volunteer fire department; and

WHEREAS, the State of Montana does not provide funding for first-class cities or second-class cities to employ paid firefighters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-33-2101, MCA, is amended to read:

"7-33-2101. Rural fire districts authorized -- petition. (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or, subject to subsection (2), incorporated ~~third-class~~ city or town upon presentation of a petition in writing signed by the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.

(2) (a) ~~Third-class cities~~ Cities and towns may be included in the district upon approval by the city or town governing body.

(b) A ~~third-class~~ city or town may withdraw from a district 2 years after providing to the board of county commissioners notice of intent to withdraw."

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2 **Section 2.** Section 7-33-2102, MCA, is amended to read:

3 **"7-33-2102. Notice of hearing.** The board shall, within 10 days after the receipt of the petition, give
4 notice of the hearing at least 10 days prior to the hearing:

5 (1) by mailing a copy of the notice as provided in 7-1-2122 or as provided in 7-1-4129 if the proposed
6 district or a portion of the proposed district is in an incorporated ~~third-class~~ city or town to each registered voter
7 and real property owner residing in the proposed district; and

8 (2) by publishing the notice as provided in 7-1-2121 or as provided in 7-1-4127 if the proposed district
9 or portion of the proposed district is in an incorporated ~~third-class~~ city or town."

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11 **Section 3.** Section 7-33-2104, MCA, is amended to read:

12 **"7-33-2104. Operation of fire districts.** When a board of county commissioners establishes a fire
13 district in any unincorporated territory or incorporated ~~third-class~~ city or town, the commissioners:

14 (1) may contract with a city, town, private fire company, or other public entity to furnish all fire protection
15 services for property within the district; or

16 (2) shall appoint five qualified trustees to govern and manage the fire district."

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18 **Section 4.** Section 7-33-2120, MCA, is amended to read:

19 **"7-33-2120. Consolidation of fire districts -- mill levy limitations.** (1) Two or more rural fire districts
20 may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of
21 trustees. At the time they vote to consolidate, the boards of trustees shall also adopt a consolidation plan. The
22 plan must contain:

23 (a) a timetable for consolidation, including the effective date of consolidation, which must be after the
24 time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

25 (b) the name of the new rural fire district;

26 (c) a boundary map of the new rural fire district; and

27 (d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

28 (2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be
29 published as provided in 7-1-2121 or as provided in 7-1-4127 if the district or part of the district is in an
30 incorporated ~~third-class~~ city or town in each county in which any part of the consolidated fire district will be

located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Real property owners in each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice the owners of 40% or more of the real property in an existing district and owners of property representing 40% or more of the taxable value of property in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

(5) The consolidation of two or more rural fire districts pursuant to this section results in the creation of a new rural fire district for the purposes of determining mill levy limitations."

Section 5. Section 7-33-2125, MCA, is amended to read:

"7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory within or outside of the limits of an incorporated ~~third-class~~ city or town that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 40% or more of the real property within the proposed area to be annexed and owners of property representing 40% or more of the taxable value of property within the proposed area to be annexed must be presented to the board of trustees of the district for approval. If the proposed annexation is approved by the board of trustees, the petition must be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on the petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the area proposed to be annexed is within an incorporated ~~third-class~~ city or town.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by at least 40% of the owners of real property in the area proposed for annexation and owners of property representing 40% or more of the taxable value of the property in the area proposed for annexation is presented at the hearing, in which case the annexation must be disapproved.

(3) The annexed territory is liable for any outstanding warrant and bonded indebtedness of the original district.

(4) (a) Territory that is within the limits of an incorporated ~~third-class~~ city or town may be annexed only upon the approval of the city or town governing body.

(b) A ~~third-class~~ city or town may withdraw from the district territory that has been annexed under this section 2 years after providing to the board of county commissioners notice of intent to withdraw."

Section 6. Section 7-33-2128, MCA, is amended to read:

"7-33-2128. Dissolution of fire district. (1) Subject to subsection (2), a fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition for dissolution signed by the owners of 40% or more of the real property in the area and owners of property representing 40% or more of the taxable value of property in the area. The procedure and requirements provided in 7-33-2101 through 7-33-2103 apply to requests for dissolution of fire districts.

(2) A board of county commissioners may not dissolve a fire district that includes territory within the limits of an incorporated ~~third-class~~ city or town unless the dissolution is approved by the governing body of the city or town."

Section 7. Section 7-33-4101, MCA, is amended to read:

"7-33-4101. Fire department authorized and protection required. ~~In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part~~ (1) Cities and towns shall provide for fire protection.

(2) A city or town may:

(a) organize, manage, and control a volunteer or paid fire department as provided in this part;

(b) contract for fire protection services with a private entity or with a fire agency created under this chapter;

(c) consolidate its fire department with another fire agency created under this chapter;

(d) provide for a volunteer fire department in addition to a paid fire department as provided in 7-33-4109;

or

(e) provide for a fire department with a combination of paid and volunteer firefighters."

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2 **Section 8.** Section 7-33-4102, MCA, is amended to read:

3 **"7-33-4102. Applicability of part.** (1) The provisions of this part govern and control fire departments
4 in every city or town ~~organized under whatever form of municipal government~~ that has a volunteer, paid, or
5 combination paid and volunteer fire department organized under this part, except where this part is in conflict with
6 the commission form of government provided for in part 42 of chapter 3.

7 (2) Whenever the provisions of this part conflict with the provisions of chapter 3, part 42, pertaining to
8 the commission form of government, the provisions pertaining to the commission form of government prevail."

9
10 **Section 9.** Section 7-33-4109, MCA, is amended to read:

11 **"7-33-4109. Supplementary volunteer fire department or combination fire department authorized**
12 **for cities of second class -- voted levy for volunteer firefighters' disability income insurance.** (1) ~~In As~~
13 provided in 7-33-4101(2)(d) and (2)(e), in addition to a paid department, the city council, city commission, or other
14 municipal governing body in cities of the second class may make provision provide for a volunteer fire department
15 or a combination department with both paid and volunteer firefighters.

16 (2) ~~The city commission or governing department governing body~~ is exempted from compliance with
17 7-33-4128 to the extent that section applies to the volunteer fire department or to volunteer firefighters in a
18 combination department by way of penalties and infringements.

19 (3) A volunteer is an enrolled member of the volunteer fire department or combination fire department;
20 ~~assists the paid fire department;~~ and is eligible to serve only on the board of trustees of the fire department relief
21 association of the city. However, not more than three volunteer members may be on the board of trustees. A
22 person who is a volunteer for the purposes of this section is not entitled to receive a service pension.

23 (4) ~~The~~ A municipal governing body of the city may:

24 (a) pay an enrolled volunteer firefighter a minimum of \$1 for attending a fire and a minimum of \$1 for each
25 hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper place;

26 (b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying
27 disability income insurance coverage for the volunteer firefighters of the volunteer fire department or combination
28 fire department as provided in 7-6-621.

29 (5) In attending fires, ~~any~~ a volunteer shall act and serve under the supervision of the chief of the ~~paid~~
30 fire department."

Section 10. Section 7-33-4128, MCA, is amended to read:

"7-33-4128. Minimum wages of firefighters in cities of first and second class. ~~After July 1, 1976, there shall be paid to each duly appointed and confirmed~~ Each member of the a fire departments of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of department organized under 7-33-4101(2)(a), (2)(d), or (2)(e) who is not a volunteer firefighter and who works 8 consecutive hours a day must be paid at least \$750 per month for the first year of service and thereafter at least \$750 per month plus 1% of said minimum base monthly salary for each additional year of service."

Section 11. Section 7-33-4130, MCA, is amended to read:

"7-33-4130. Group insurance for firefighters -- funding. ~~(1) Cities of the first and second class, if they~~ A city that provide provides insurance for other city employees under Title 2, chapter 18, part 7, and that has a paid or combination paid and volunteer fire department organized under this part shall:

(a) provide the same insurance to ~~their respective~~ its paid firefighters;

(b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Subject to 15-10-420, ~~those~~ incorporated cities and towns that require additional funds to finance the provisions of this section may levy, by the amount required to meet these provisions, a tax on the taxable value of all taxable property in the respective city or town. This levy must be collected in the same manner and at the same time as other taxes are levied."

Section 12. Section 19-13-102, MCA, is amended to read:

"19-13-102. Purpose -- application of prior law. (1) Because cities ~~other than those of the first or second class currently may~~ have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities ~~other than those of the first or second class~~ that do not have full-paid or part-paid firefighters that wish to adopt it. The second, created by this chapter, applies to cities ~~of the first or second class and those other~~

1 ~~cities that wish to adopt it~~ that have full-paid or part-paid firefighters. The purpose of the second system is to
2 provide equity and security for retired paid firefighters and firefighters who served cities ~~of the first and second~~
3 ~~class and other cities~~ electing to join the plan by creating a centrally administered system responsible for
4 continuing all retirement payments from the assets of the system.

5 (2) Title 19, chapter 18, may not be applied in any way to a city operating under the plan created by this
6 chapter except as otherwise provided."

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8 **Section 13.** Section 19-13-104, MCA, is amended to read:

9 **"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
10 chapter:

11 (1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a
12 county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
13 firefighting services, or the entire county included in the county-municipal consolidation.

14 (2) "Compensation" means:

15 (a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for
16 the member's services before any pretax deductions allowed by state and federal law are made;

17 (b) for a part-paid firefighter ~~employed by a city of the second class~~:

18 (i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments,
19 compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly
20 confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

21 (ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding
22 overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of
23 sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters ~~employed by cities of the~~
24 ~~second class~~.

25 (c) Compensation for full-paid and part-paid firefighters does not include:

26 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments
27 in lieu of sick leave; and

28 (ii) maintenance, allowances, and expenses.

29 (3) "Dependent child" means a child of a deceased member who is:

30 (a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that ~~is of the first or second class~~ has full-paid or part-paid firefighters or that elects to join this retirement system under 19-13-211;

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city ~~of the first or second class~~.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

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2 **Section 14.** Section 19-13-210, MCA, is amended to read:

3 **"19-13-210. Participation in retirement system.** (1) Cities ~~of the first and second class~~ that employ
4 full-paid firefighters shall participate in the retirement system. If a city ~~of the first or second class is reduced to a~~
5 ~~city of the third class or a town under 7-1-4118~~ changes its method of fire protection under 7-33-4101, it shall
6 continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive
7 retirement benefits.

8 (2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the
9 date of the execution of an agreement between the department of military affairs and the board, whichever is
10 later, shall participate in the retirement system.

11 (3) (a) A city that is not covered under subsection (1) and that has full-paid firefighters covered by the
12 public employees' retirement system and any rural fire district department with full-paid firefighters covered by
13 the public employees' retirement system may elect to be covered under the retirement system as provided in
14 19-13-211.

15 (b) An election by a city fire department to be covered by the retirement system must be made through
16 adoption of an ordinance stating that the governing body of the city agrees to be bound by the provisions of the
17 retirement system.

18 (c) A similar election may be made by a rural fire district through adoption of a resolution stating that the
19 governing body of the fire district agrees to be bound by the provisions of the retirement system.

20 (d) The ordinance or resolution must specify the effective date of the election. The provisions of the
21 retirement system become applicable on the effective date specified in the adopted ordinance or resolution. A
22 certified copy of the ordinance or resolution must be provided to the board.

23 (4) The following are the terms and conditions of an election to join the retirement system pursuant to
24 subsection (3):

25 (a) Each firefighter employed by the fire department before the effective date of the election must be
26 given 90 days from the effective date of the election to make an individual, one-time, irrevocable election to
27 remain in the public employees' retirement system or to join the retirement system. Failure to make an election
28 under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.

29 (b) Each firefighter employed by the fire department who is hired on or after the effective date of the
30 election must be covered by the retirement system.

(c) A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or purchase the prior service and transfer that prior service to the retirement system as provided for in 19-2-715."

Section 15. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

(8) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

(9) "Fire company" means a fire company organized under 7-33-2311 in an unincorporated area, town, or village and includes a volunteer fire department, a fire district, ~~and~~ a fire service area, and a combination fire department created under the provisions of Title 7, chapter 33.

(10) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(11) "Member" means a volunteer firefighter who has service credited under this chapter.

(12) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

(14) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(16) "Surviving spouse" means the spouse married to a member when the member dies.

(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

(19) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -