

forest shall have been procured through fraud or deception practiced upon the county board or the commissioner or any other person or body representing the state, it may be canceled upon suit brought by the attorney general at the direction of the executive council. This cancellation shall have the same effect as the cancellation of a contract by the commissioner.

Approved March 25, 1959.

CHAPTER 131—S. F. No. 888

[Not Coded]

An act relating to firemen's relief and retirement in the City of Rochester; providing for a relief association and rules and regulations therefor.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Definitions.** For the purposes of this act the following terms shall have the following meanings:

(a) "Fire department" means the fire department of the city of Rochester, Minnesota.

(b) "Relief association" or "association" means the Rochester fire department relief association.

(c) "Fireman" used alone means every person who is duly appointed and regularly entered upon the payroll of the fire department of the city of Rochester and who is on active duty with that department. The term does not include temporary or emergency employees.

(d) "Member" used alone means every fireman who has been admitted to membership in the relief association as hereinafter provided.

(e) "Unit" means a fractional part of the lowest monthly base salary paid to any fireman as such salary is established from time to time by the common council. A "unit" shall be not more than one-seventy-fifth and not less than one-ninetieth of such monthly salary as established from time to time in accordance with the provisions of this act.

(f) "Disability" means a physical or mental, or combination physical and mental, incapacity which renders a member unable to perform the duties of his position in the fire department.

(g) "Pensioner" means a member of the relief association who has qualified and is receiving a pension.

(h) "Deferred pensioner" means a member of the relief association who has completed not less than 20 years of service in the fire department of the city of Rochester, who retires before reaching the age of 50 years, and who is entitled upon request to receive a pension when he attains the age of 50 years.

Sec. 2. Relief association; organization. The Rochester fire department relief association an existing corporation under the laws of the state of Minnesota shall continue as a corporation and have perpetual corporate existence. The relief association shall be organized, operated, and maintained in accordance with its own articles of incorporation and bylaws and shall have all corporate powers which may be necessary or useful for the regulation of its management and affairs, subject however to the provision of this act and the other laws of this state pertaining to corporations which are not inconsistent herewith.

Sec. 3. Officers; trustees. The officers of the relief association shall be a president, one or more vice-presidents, a secretary, and a treasurer. The offices of assistant secretary and assistant treasurer may be created by the bylaws of any such associations. The affairs of the association shall be managed by a board of trustees elected in the manner prescribed by the articles of incorporation of the association.

The secretary and treasurer of the relief association shall each furnish a corporate bond to the association for the faithful performance of their duties in amounts as the association from time to time may determine. The relief association shall be and is hereby authorized to pay the premiums on such bonds from its special fund.

Sec. 4. Secretary and treasurer to prepare statement of receipts and expenditures. The secretary and treasurer of the relief association prior to the first day of February in each year shall jointly prepare and sign with the approval of the association's board of trustees a detailed and itemized report of all receipts and expenditures in the association's special fund for the preceding calendar year, showing the source of such receipts, to whom and for what purpose the money had been paid and expended, and the balance of the fund. They shall file certified copies thereof with the city clerk and the state auditor. No money shall be paid to the relief association by either the state of Minnesota or the city of Rochester until the report is filed.

Sec. 5. Board of examiners. The relief association shall establish a board of examiners who shall as and when requested by the association's board of trustees make a thorough investigation and report on all applications for membership in the association; investigate and make report on all applications for disability pension and make recommendations as to amount to be paid to the applicant; investigate and make report on all disability pensioners and make recommendations as to amount of pension to be paid to them from year to year; and investigate and report on all applications for service pensions and claims for relief. This board shall consist of a competent physician selected by the association and at least three members of the relief association on active duty with the fire department.

Sec. 6. Who are members of relief association. Subdivision 1. Except as hereinafter provided every fireman as defined in section 1 shall be eligible to apply for membership in the relief association within the time and in the manner following: Any such fireman desiring to become a member shall not later than 90 days from the time when he is regularly entered on the payrolls of the fire department make written application for membership in the relief association on forms supplied by the association accompanied by one or more physician's certificates as required by the bylaws of the association. After the application has been filed the board of examiners of the association shall make a thorough investigation thereof and file their report with the secretary of the association. Such application must be acted upon by the association within six months from the date applicant was entered on the payroll of the fire department. No fireman who is more than 35 years of age when his application is filed can become a member of the relief association except that such age limitation of 35 years shall not apply on application for reinstatement in the association.

Subd. 2. The relief association shall have the right to exclude all applicants for membership who are not physically and mentally sound so as to prevent unwarranted risks for the association.

Sec. 7. City clerk to file report of existence of association. The city clerk shall on or before October 31 in each year make and file with the insurance commissioner of this state his certificate stating the existence of the relief association.

Sec. 8. Minnesota Statutes 1957, Section 69.02 and 69.03 shall apply to this act and the Relief Association as

herein defined shall enjoy the rights and privileges therein provided for.

Sec. 9. State treasurer to pay warrant. The state treasurer shall upon presentation to him of the warrant of the state auditor specified in section 8 above pay out of the general revenue fund of the state the amount thereof to the treasurer of the relief association upon presentation of the warrant.

Sec. 10. Tax levy. Subdivision 1. Except as provided in subdivision 2 in addition to all other taxes it may levy the common council of the city of Rochester shall levy a tax of one mill at the time and in the manner it levies other taxes and the proceeds of this tax shall be paid to the relief association.

Subd. 2. At any time the balance in the special fund reaches \$150,000 any levy in an ensuing year shall be only such as will be calculated to maintain this amount but in no event shall any levy exceed one mill or be less than three-tenths of one mill.

Subd. 3. The tax required to be levied as herein provided shall be separate and distinct from all other taxes levied and shall not be included in the calculation of any limitations imposed by the charter of the city of Rochester on the power to tax.

Sec. 11. Salary deductions. During all times that the relief association is in existence the city shall regularly deduct from the salary of each member of the association an amount equal to two percent of the lowest base salary paid to any fireman. In the event the actual balance of cash and investments in the special fund ever becomes less than \$75,000 the city shall regularly deduct from the salary of each member of the association an amount equal to four percent of the lowest base salary paid to any fireman and shall continue to deduct such amount until the actual balance of cash and investments in the special fund again reaches \$75,000 or more. In no event shall any such deduction be less than two percent or more than four percent of such lowest base salary. All salary deductions shall be remitted by the city to the treasurer of the relief association not less than quarterly.

Sec. 12. Special fund; maintenance. Subdivision 1. Whenever the balance in the special fund of the relief association is less than \$50,000 as determined by the board of trustees and certified to by the public examiner the board of trustees may thereupon file with the commissioner of insur-

and its duly verified petition for relief accompanied by the public examiner's certificate. The commissioner of insurance shall thereupon order and direct a surcharge to be collected of two percent of the fire, lightning, and sprinkler leakage gross premiums, less return premiums, on all direct business received by any foreign or domestic fire insurance company on property within the corporate limits of the city of Rochester, or by its agents for it, in cash or otherwise, until the balance in the special fund amounts to \$50,000 and for a period of 15 days thereafter. As soon as the balance in the special fund amounts to \$50,000 the board of trustees of such relief association shall certify that fact to the commissioner of insurance and the commissioner of insurance shall forthwith issue his order ordering and directing that the collection of such surcharge shall be discontinued after the expiration of said 15-day period and shall forthwith mail a copy of the order last mentioned to each insurance company affected thereby. Said surcharge shall be due and payable from such companies to the state treasurer in semiannual installments on June 30 and December 31 of each calendar year, to be kept by the state treasurer in a separate fund, and if not paid within 30 days after such dates a penalty of three percent shall accrue thereon and thereafter such sum and penalty shall draw interest at the rate of one percent per month until paid.

Subd. 2. The state auditor on each July 31 and January 31 shall issue and deliver to the treasurer of the relief association his warrant upon the state treasurer for an amount equal to the total amount of such surcharge on said premium theretofore collected and transmitted to the state treasurer by such insurance companies. Said warrants shall be paid to the treasurer of the relief association out of said separate fund hereinbefore provided for.

Subd. 3. The treasurer of the relief association shall place the money received by him in payment of any such warrant in the special fund.

Subd. 4. An emergency exists and this section shall be construed as a relief measure for the relief association.

Sec. 13. Relief association to have custody of funds. The relief association shall have full and permanent charge of and responsibility for the proper management and control of all funds that may come into its possession and particularly funds derived from the following sources:

(a) Funds derived from the state of Minnesota and interest from the investment thereof;

(b) Funds derived from salary deductions and the tax levies by the city of Rochester and interest from the investment thereof; and

(c) Funds derived from private sources such as gifts, charges, rents, entertainments, dues paid by members, and from other sources.

Sec. 14. Money to be kept in two funds. The money received from the various sources shall be kept in two separate and distinct funds, one to be designated as the special fund and the other as the general fund. All money received from the state of Minnesota, from salary deductions, from taxes levied by the city of Rochester, and interest from the investment thereof shall be deposited in the special fund and expended only for purposes hereinafter authorized. All money received from other sources shall be deposited in the general fund and may be expended for any purpose deemed proper by the relief association.

Sec. 15: Special fund; authorized uses. The special fund shall be used only for the following purposes:

(a) For the payment of service, disability, or dependency pensions to members of the association and to their widows and children as hereinafter provided and for the relief of sick, injured, and disabled members of the relief association;

(b) For the payment of all expenses of administering said fund including expenses in connection with the investment and protection of moneys in said fund; and

(c) For the payment of all expenses of operating and maintaining the association including the secretary's and treasurer's salaries.

Sec. 16. Pensions; limitations. Subdivision 1. The relief association shall grant pensions to its members payable from the special fund in monthly installments in the following manner and for the following purposes:

(a) Any member of the age of 50 years or more who performs duty as a member of the fire department of the city for 20 years or more upon his written application after retiring from such duty shall be paid monthly during his lifetime a pension equal to 35 units and an additional unit for each year of such service in excess of 20 years but not to exceed 42 units;

(b) Any member who performs duty as a member of

the fire department of the city for 20 years or more who retires from such duty before he attains the age of 50 years upon his written application after reaching the age of 50 years shall be paid monthly during his lifetime a pension equal to 35 units and an additional unit for each year of such service in excess of 20 years but not to exceed 40 units; and

(c) . Any member not eligible for a service pension who while a member of the fire department of the city becomes *diseased or sustains an injury which permanently unfits him* for the performance of department duties shall be paid monthly during his lifetime a disability pension equal to 36 units while so disabled. No member shall be awarded, granted, or paid a disability pension under the provisions of this clause except upon the certificate of two or more physicians or surgeons chosen by the board of trustees. This certificate shall set forth the cause, nature, and extent of the disability, disease, or injury of the member. No member shall be awarded, granted, or paid a disability pension pursuant to this clause unless the certificate states the disability, disease, or injury. Each such certificate shall be filed with the secretary of the association.

Subd. 2. In the case of an applicant for a pension pursuant to clauses (a) and (b) of subdivision 1 above who, following admission to membership in the association, has served in the military forces of the United States in any war or national defense emergency subsequent to January 1, 1940, and thereafter returned honorably discharged from such service and resumed membership in the association, the period that the applicant spends in such military service shall be counted in computing the period of service required for benefits under this section. During such period of military service or defense emergency service any such person is not considered a member of the association and is not entitled to any service pension, disability benefits, or deferred pension as provided in clauses (a) and (b) of subdivision 1 above unless previously earned. If the member does not return to employment in the fire department of the city of Rochester within one year from the time peace is declared or within one year from the termination of the period of emergency, whichever is later, the provisions of this subdivision shall not apply.

Subd. 3. Every member of the association who was retired on January 1, 1959, and was receiving a service pension on that date or had attained a deferred pensioner status on that date and who is eligible to receive a pension thereafter shall receive a pension each month thereafter during the time he is so eligible to receive a service pension equal to not less

than 32 units and not more than 35 units as determined by a uniform rule established by the board of trustees.

Sec. 17. Dependency pensions. The association shall grant dependency pensions payable from the special fund to any widow or to any child under 18 years of age of any member as follows:

(a). When a service pensioner, deferred pensioner, disability pensioner, or an active member of the relief association dies leaving a widow who was his legally married wife residing with him and who was married while or prior to the time he was on the payroll of the fire department; and who, in case the deceased member was a service or deferred pensioner, was legally married to the member at least one year before his retirement from the fire department; then to such widow a dependency pension of 18 units per month for her natural life but if she remarries the pension shall cease as of the date of the remarriage.

(b) When a service pensioner, deferred pensioner, disability pensioner, or an active member of the relief association dies leaving a child or children who were living while the deceased was on the payroll of the fire department or born within ten months after the deceased was withdrawn from such payroll, then to each such child a dependency pension of six units per month until the child reaches the age of 18 years.

(c) The total dependency pensions payable under clauses (a) and (b) above for the widow and children of a deceased member shall not exceed 36 units per month.

Sec. 18. Benefits. Any member who becomes disabled from performing his duties as a member of the fire department by reason of sickness or accident, if off the payroll of the fire department because of having exhausted all sick leave and other benefits due him, is entitled to receive from the association during his disability such benefits as the bylaws of the association provide but such benefits shall not extend beyond a six-month period. The bylaws may provide that such a member shall have completed a minimum number of years of service in order to be entitled to such benefits. Before any such benefits shall be paid or allowed notice of the disability and application for benefits on account thereof shall be made to the secretary of the association within 30 days after such sick leave or other benefits are exhausted.

Sec. 19. Refunds. If a member of the association is separated from his employment with the fire department due to resignation or other reason and at the time of such separa-

tion neither the member nor his dependents is entitled to a pension under the provisions of sections 17 or 18 the treasurer of the association shall refund from the special fund all of the amounts deducted from his salary up to the effective date of this act, without interest, and 75 percent of the amounts deducted from his salary subsequent to the effective date of this act, without interest.

Sec. 20. Board of trustees to establish amount of unit. The board of trustees shall establish from time to time the amount of the "unit" as defined in section 1 above upon which the amounts of the various pensions provided for in this act are calculated. The amount of the unit shall be established by written resolution adopted by a vote of not less than five-sixths of all official members of the board of trustees.

In establishing the amount of the unit the board of trustees shall take into consideration all pertinent facts and circumstances and shall limit the unit if possible to such an amount as will permit the payment of all pensions and anticipated pensions from anticipated funds available.

Sec. 21. Present pension payments not to be reduced. None of the provisions of this act shall have the effect of eliminating or reducing service, disability, or dependency pension payments which are being made on the effective date of this act.

Sec. 22. Pension payments exempt from legal process. Any payment made by this association under any provision of this act is exempt from any legal process. No person entitled to any such payment may assign the same. The association may not recognize any assignment or pay any sum on account thereof.

Sec. 23. Actions against association; bond. No person shall sue for any benefits provided for unless he shall post a bond in a sufficient amount to defray the cost of the governing board of defending the action. In the event the governing board is sustained the portion of the bond necessary to defray these costs shall be forfeited.

Sec. 24. Workmen's compensation act not affected. None of the provisions of this act shall be construed as abridging, repealing, or amending the laws of this state relating to the provisions of the law commonly known as the workmen's compensation act.

Sec. 25. Pension fund investment restrictions. The board of trustees of the Rochester fire department relief asso-

ciation shall from time to time invest pension funds available for that purpose and they may buy bonds issued by the city of Rochester at the market value thereof, or bonds issued by the board of education of the city of Rochester at the market value thereof, or buy bonds of the state of Minnesota, or United States bonds, notwithstanding the state of Minnesota or United States bonds may be above par value thereof at the time of the investment; they may deposit these funds in any bank in the city of Rochester, Minnesota. They may also make first mortgage loans to active members of the Rochester fire department. All loans made by this association must first be approved by the board of trustees and then approved by the common council of the city of Rochester. These loans cannot be made for a period exceeding 15 years and a fair rate of interest must be charged. The interest may be raised or lowered on new loans according to the trend of the times. Any interest change must be passed by a two-thirds vote of the members present at the regular or special meeting that the request to change the interest is made.

Sec. 26. Public examiner to examine accounts. The public examiner of the state of Minnesota shall each year examine the books and accounts of the relief association. If he finds that any money has been expended for purposes not authorized by the provisions of this act he shall report the same to the governor who shall thereupon direct the state auditor not to issue any further warrants to the association until the public examiner shall report that money unlawfully expended has been replaced. The governor may also take such further action as may be desirable or required. The relief association shall pay to the state the total cost and expense of the examination, including the salaries paid to the examiners while actually engaged in making the examination. The revolving fund of the public examiner shall be credited with all collections made for the examination.

Sec. 27. Effective date. This act shall become effective only after its approval of a majority vote of the common council of the city of Rochester.

Approved March 25, 1959.

CHAPTER 132—H. F. No. 258

[Coded]

An act relating to highways, and, subject to Congressional approval, providing for cooperation between the State