

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 188
HOUSE BILL 758

AN ACT TO SUPERSEDE CHAPTERS 242 AND 243 OF THE 1939 SESSION LAWS, AMENDED BY CHAPTERS 310 AND 311 OF THE 1945 SESSION LAWS AND CHAPTERS 320 AND 322 OF THE 1955 SESSION LAWS, RELATING TO THE POLICEMEN AND FIREMEN PENSION FUND OF THE CITY OF ASHEVILLE AND SUBSTITUTING IN LIEU THEREOF A NEW ACT TO PROVIDE FOR THE RETIREMENT AND DISABILITY OF POLICEMEN AND FIREMEN OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

Section 1. Chapters 242 and 243 of the 1939 Session Laws, Chapters 310 and 311 of the 1945 Session Laws and Chapters 320 and 322 of the 1955 Session Laws are hereby superseded by this act.

Sec. 2. Definition, policemen's fund. For the purposes of this act, members of the Asheville Police Department shall mean those persons in the full-time employ of the City of Asheville and assigned to the Police Department of the City of Asheville, excluding participants in the Asheville General Employees Retirement Plan, it being the purpose herein that only those persons who are full-time employees of the Police Department of the City of Asheville shall receive benefits under this act and no temporary or otherwise appointments.

Sec. 3. Establishment and composition of policemen's fund; refund of salary deductions. A pension fund is hereby established and placed under the management of a board of trustees for the purposes of providing retirement allowances and other benefits under the provisions of this act for members of the Police Department of the City of Asheville to be known as the "Asheville Policemen's Pension and Disability Fund" (herein called, "policemen's fund"), and said fund shall be made up and established as follows:

(a) The Director of Finance of the City of Asheville is hereby authorized, directed, and empowered to deduct for each calendar month beginning on July 1, 1955, five percent (5%) of the monthly salary of every member of the policemen's fund as defined in this act.

(b) That after deducting the five percent (5%) set out in subsection (a) of this section, the director of finance shall pay over to the policemen's fund the amount equal to five percent (5%) of the total salaries set out in the above paragraph.

(c) That the City of Asheville shall, effective with the ratification of this act, pay into the policemen's fund for the remainder of its fiscal year ending June 30,

1977, and for each full fiscal year beginning on or after July 1, 1977, such additional sums of money over and above the foregoing policemen's employee contributions as may be required to meet the standards of actuarial soundness as certified by a qualified actuary as defined in North Carolina General Statutes 106A-163(d). In no event shall the city's annual contribution be less than the total annual amount contributed by the members of the policemen's fund, as defined in this act. No amendment shall cause or permit any part of the fund's assets to be used for or diverted to purposes other than for the exclusive benefit of the participants and retired participants, or their beneficiaries.

(d) That on or after July 1, 1955, any member of the police department who ceases to be a member thereof for any reason whatsoever may, upon written application to the board of examiners, be entitled to be refunded in full for all funds deducted from his monthly salary and paid into the policemen's fund since July 1, 1955; provided that upon acceptance of said refund he thereby automatically waives any and all pension rights and is thereafter barred from any benefits or payments or any other rights under this act.

Sec. 4. Administration and responsibility for operation of policemen's fund.

(a) Board of trustees. The administration and responsibility for the proper operation of the fund and for making effective the provisions of this act are hereby vested in the board of trustees.

(b) Powers and authority of the board of trustees. The board of trustees shall transact all business, invest all funds, and hold cash and securities in the name of the "Asheville Policemen's Pension and Disability Fund".

(c) Members of board. The board shall consist of: (1) a member of the Asheville City Council elected by the city council, who shall serve at the pleasure of the council; (2) an employee of the Fire Department of the City of Asheville under the classified service of said city, other than the fire chief, elected by employees of the fire department for a term of three years beginning with the effective date of this act and every three years thereafter; (3) an employee of the Police Department of the City of Asheville under the classified service of said city, other than the police chief, elected by employees of the police department for a term of three years beginning with the effective date of this act and every three years thereafter. Vacancies occurring during the terms of office of the police and fire trustees shall be filled from the same category as the vacancy.

(d) Operation of fund. The board of trustees shall engage and pay for such actuarial, auditing, investment counseling, legal and other services as shall be required to transact the business of the fund, and in addition, may engage the services of the finance director and the personnel director of the City of Asheville, who shall serve without compensation. The board of trustees shall pay from the policemen's fund benefits as provided for under the terms of this act to such policemen or such beneficiaries as may be entitled under the terms of this act, such benefits to be payable on the first day of each month.

(e) Audit. The board of trustees shall keep a record of all its proceedings and shall publish annually a report showing the fiscal transactions of the fund for the preceding year, the amount of the accumulated cash and securities of the fund, and the

last balance sheet showing the financial condition of the fund by means of an independent audit of the fund using generally accepted accounting principles.

Sec. 5. Normal retirement. Any person who is now a member of the Asheville Police Department, as shown by the records of the City of Asheville, and who becomes a member of the police department on and after March 17, 1939, subject to the provisions of Section 14 of this act, and who has a service of 20 years with said police department, and who has arrived at an age of 60 years, shall have the right to retire from service from the Police Department of the City of Asheville and receive benefits of retirement as set out in this act.

Sec. 6. Mandatory retirement. Any person who becomes a member of the Police Department of the City of Asheville on and after March 17, 1939, subject to the provisions of Section 14 of this act, and has served in said department for 20 years, and has arrived at the age of 66 years, shall retire from the active service of the Police Department of the City of Asheville and shall receive the benefits of the policemen's fund, as set out in this act.

Sec. 7. Credit for service with fire department. Any person who has been in the employ of the City of Asheville as a member of the Asheville Fire Department and has been transferred to the employ of the Asheville Police Department shall receive credit, for the purpose of retirement as set out in this act, for the number of years' service that he has had as a member of the Asheville Fire Department.

Sec. 8. Retirement benefits. (a) Any member of the Asheville Police Department who wishes to retire under the specifications set out in Section 5 of this act, and who has become 60 years of age, and has a total service of 20 years, shall receive annually from the policemen's fund, as set out in this act, a sum equal to three and one-half percent (3 1/2%) of the total salary that he has received for the last 20 years of service with the department, said three and one-half percent (3 1/2%) shall be paid in monthly installments by the board of trustees of the policemen's fund; provided, however, that if the officer coming under the specifications of this section shall die, then the surviving spouse, so long as said surviving spouse remains unmarried, shall receive fifty percent (50%) of what the member would have received should he have lived.

(b) Any person coming under the specifications of Section 6 of this act and having reached the age of 66 years, and having acquired a service record for 20 years, shall receive the same pension as set out in subsection (a) of this section.

Sec. 9. Disability and death benefits. (a) If and in the event any member of the Asheville Police Department qualifying under this act shall become disabled while acting in the line of his police duties or as a result of the performance of duties as a member of the Asheville Police Department, and is unable to work as a policeman, he shall receive monthly a sum equal to seventy percent (70%) of his monthly salary as then paid by the City of Asheville, said seventy percent (70%) of said monthly salary shall be paid in monthly installments by the board of trustees of the policemen's fund; provided, however, that if under the North Carolina Workmen's Compensation Act he shall receive any payments due to such disability, then the amount of such compensation payment shall be deducted from the amount of his said monthly installment, and there shall be paid from the policemen's fund only such amount as may

be required to make up his said monthly installment; provided, further, that if such member of the Asheville Police Department shall be killed in the line of his police duties, or shall die as a result of a disability as defined in this section, the surviving spouse shall receive, so long as said surviving spouse remains unmarried, the same monthly installment as the member would have received under this section; provided, further, that if, under the North Carolina Workmen's Compensation Act such surviving spouse elects to take a lump sum settlement of the amount due on account of the death of the member, then such surviving spouse, so long as said surviving spouse remains unmarried, shall receive from the policemen's fund each month a sum equal to the difference between the monthly installment that would have been received under the Workmen's Compensation Act and the amount of the deceased member's monthly installment, and such payments from the policemen's fund shall continue so long as said surviving spouse remains unmarried.

(b) If any member of the Asheville Police Department, as set out in this act, becomes disabled not in the line of duty, he shall receive annually a sum equal to three and one-half percent (3 1/2%) of his total earnings from the beginning of his service on the Asheville Police Department to the time of his disability; provided, however, that three years' service with the Asheville Police Department is required before any member thereof can take advantage of this section; provided, further, that if such member should die from disability not received in the line of duty, the surviving spouse shall receive one-half of the pension paid to the member at the time of death so long as said surviving spouse remains unmarried.

(c) If any member of the Asheville Police Department, as set out in this act, shall die leaving no surviving spouse entitled to benefits in accordance with Section 8 or 9 of this act, the funds deducted from such policeman's monthly salary and paid to the policemen's fund shall be paid as follows:

- (1) to the child or children of such policeman in equal shares;
- (2) if there is no surviving child or children, to the designated beneficiary of the policeman, if any;
- (3) if there is no surviving child or children or designated beneficiary, to the executors or administrators of the policemen's estate.

Sec. 10. Reserved.

Sec. 11. Maximum benefits. In no event shall any policeman coming under the provisions of this act receive annually more than three and one-half per cent (3 1/2%) of his total salary for a period of 20 years, as set out in Sections 8 and 9(b) of this act.

Sec. 12. Board of examiners; appeals. (a) The mayor of the City of Asheville shall be the chairman of a board of examiners to determine the claims of policemen claimants under this act; the city manager of the City of Asheville shall be a member of said board; the council of the City of Asheville shall elect for a term of three years beginning on the date of ratification of this act and every three years thereafter a citizen of the City of Asheville who is a medical doctor to be the third member of said board; the Police Department of the City of Asheville shall elect for a term of three years beginning on the date of ratification of this act and every three years thereafter a person

who is a member of said police department, who shall not be the police chief, to be the fourth member of said board; the Fire Department of the City of Asheville shall elect for a term of three years beginning on the date of ratification of this act and every three years thereafter a person who is a member of said department, who shall not be the fire chief, to be the fifth member of said board; said third, fourth, and fifth members shall serve until their successors are duly elected and qualified and said board shall have the power and authority to determine the claims of said policemen claimants coming under the provisions of this act and their decision shall be reported to the board of trustees for their approval.

(b) The board of trustees shall review the findings of the board of examiners and may approve or reverse the findings of the board of examiners.

(c) Any policeman claimant, his beneficiary or representative whose claim has been denied in whole or in part after review by the board of trustees shall have the right to appeal to the Asheville City Council. Such appeal must be filed by the policeman claimant, his beneficiary or representative in writing with the city clerk within 10 days after receipt of written denial of all or part of the claim by the board of trustees. Such appeal will be heard at a regular weekly city council meeting within six weeks of the filing of the appeal by said policeman claimant, his beneficiary or representative. The decision of the city council shall be final.

(d) The policeman claimant, his beneficiary or representative has the right to file an appeal within 30 days of the city council action outlined in subsection (c) of this section to a court of competent jurisdiction where the issues shall be heard and determined de novo with or without a jury.

Sec. 13. Investment of surplus funds. The board of trustees is hereby authorized and empowered to invest any surplus funds accumulated in what is known as the policemen's fund in obligations of the United States Government or obligations fully guaranteed both as to principal and interest by the United States Government or an agency of the United States Government; obligations of the State of North Carolina and certificates of deposit in any banks and shares of any savings and loan associations or building and loan associations operating in the State of North Carolina or credit unions to the extent insured by the government or an agency of the United States.

Sec. 14. Freezing membership in policemen's fund. From and after the effective date of any ordinance of the Asheville City Council establishing an employee retirement and disability plan covering employees of the City of Asheville assigned to the Asheville Police Department under the classified service of said city, future employees so assigned to the police department shall participate in and contribute to such employee retirement and disability plan pursuant to the terms and conditions thereof, and shall not participate in or contribute to the pension plan established by this act; provided, however, that any such employees' retirement and disability plan hereafter established by ordinance of the Asheville City Council shall meet standards of actuarial soundness as required by North Carolina General Statutes 160A-163 and that the city shall contribute such sums of money to said plan as may be required to meet the standards of actuarial soundness as certified by a qualified actuary as defined in North Carolina General Statutes 160A-163(d).

Sec. 15. Definition, firemen's fund. For the purposes of this act, members of the Asheville Fire Department shall mean those persons in the full-time employ of the City of Asheville and assigned to the Fire Department of the City of Asheville, it being the purpose herein that only those persons who are full-time employees of the Fire Department of the City of Asheville, excluding participants in the Asheville General Employees Retirement Plan, shall receive benefits under this act and no temporary or otherwise appointments shall receive benefits under this act.

Sec. 16. Establishment and composition of firemen's fund; refund of salary deductions. A pension fund is hereby established and placed under the management of a board of trustees for the purposes of providing retirement allowances and other benefits under the provisions of this act for members of the Fire Department of the City of Asheville to be known as the "Asheville Firemen's Pension and Disability Fund" (herein called, "Firemen's Fund"), and said fund shall be made up and established as follows:

(a) The Director of Finance of the City of Asheville is hereby authorized, directed, and empowered to deduct for each calendar month beginning on July 1, 1955, five percent (5%) of the monthly salary of every member of the firemen's fund as defined in this act.

(b) That after deducting the five percent (5%) set out in subsection (a) of this section, the director of finance shall pay over to the firemen's fund the amount equal to five percent (5%) of the total salaries set out in the above paragraph.

(c) That the City of Asheville shall, effective with the ratification of this act, pay into the firemen's fund for the remainder of its fiscal year ending June 30, 1977, and for each full fiscal year beginning on or after July 1, 1977, such additional sums of money over and above the foregoing firemen's employee contributions as may be required to meet the standards of actuarial soundness as certified by a qualified actuary as defined in North Carolina General Statutes 160A-163(d). In no event shall the city's annual contribution be less than the total annual amount contributed by the members of the firemen's fund, as defined in this act. No amendment shall cause or permit any part of the fund's assets to be used for or diverted to purposes other than for the exclusive benefit of the participants and retired participants, or their beneficiaries.

(d) That on or after July 1, 1955, any member of the fire department who ceases to be a member thereof for any reason whatsoever may, upon written application to the board of examiners, be entitled to be refunded in full for all funds deducted from his monthly salary and paid into the firemen's fund since July 1, 1955; provided that upon acceptance of said refund he thereby automatically waives any and all pension rights and is thereafter barred from any benefits or payment or any other rights under this act.

Sec. 17. Administration and responsibility for operation of firemen's fund.

(a) Board of trustees. The administration and responsibility for the proper operation of the fund and for making effective the provisions of this act are hereby vested in the board of trustees.

(b) Powers and authority of the board of trustees. The board of trustees shall transact all business, invest all funds, and hold cash and securities in the name of the "Asheville Firemen's Pension and Disability Fund".

(c) Members of board. The board shall consist of: (1) a member of the Asheville City Council elected by the city council, who shall serve at the pleasure of the council; (2) an employee of the Police Department of the City of Asheville under the classified service of said city, other than the police chief, elected by employees of the police department for a term of three years beginning with the effective date of this act and every three years thereafter; (3) an employee of the Fire Department of the City of Asheville under the classified service of said city, other than the fire chief, elected by employees of the fire department for a term of three years beginning with the effective date of this act and every three years thereafter. Vacancies occurring during the terms of office of the police and fire trustees shall be filled from the same category as the vacancy.

(d) Operation of fund. The board of trustees shall engage and pay for such actuarial, auditing, investment counseling, legal and other services as shall be required to transact the business of the fund, and in addition, may engage the services of the finance director and the personnel director of the City of Asheville, who shall serve without compensation. The board of trustees shall pay from the firemen's fund benefits as provided for under the terms of this act to such firemen or such beneficiaries as may be entitled under the terms of this act, such benefits to be payable on the first day of each month.

(e) Audit. The board of trustees shall keep a record of all its proceedings and shall publish annually a report showing the fiscal transactions of the fund for the preceding year, the amount of the accumulated cash and securities of the fund, and the last balance sheet showing the financial condition of the fund by means of an independent audit of the fund using generally accepted accounting principles.

Sec. 18. Normal retirement. Any person who is now a member of the Asheville Fire Department, as shown by the records of the City of Asheville, and who becomes a member of the fire department on and after March 17, 1939, subject to the provisions of Section 27 of this act, and who has a service of 20 years with said fire department, and who has arrived at an age of 60 years, shall have the right to retire from service from the Fire Department of the City of Asheville and receive benefits of retirement as set out in this act

Sec. 19. Mandatory retirement. Any person who becomes a member of the Fire Department of the City of Asheville on and after March 17, 1939, subject to the provisions of Section 27 of this act, and has served in said department for 20 years, and has arrived at the age of 66 years shall retire from the active service of the Fire Department of the City of Asheville and shall receive the benefits of the firemen's fund, as set out in this act.

Sec. 20. Credit for service with police department. Any person who has been in the employ of the City of Asheville as a member of the Asheville Police Department and has been transferred to the employ in the Asheville Fire Department shall receive credit, for the purpose of retirement as set out in this act, for the number of years' service that he has had as a member of the Asheville Police Department.

Sec. 21. Retirement benefits. (a) Any member of the Asheville Fire Department who wishes to retire under the specifications set out in Section 18 of this

act, and who has become 60 years of age, and has a total service of 20 years, shall receive annually from the firemen's fund, as set out in this act, a sum equal to three and one-half percent (3 1/2%) of the total salary that he has received for the last 20 years of service with the department, said three and one-half percent (3 1/2%) shall be paid in monthly installments by the board of trustees of the firemen's fund; provided, however, that if the officer coming under the specifications of this section shall die, then the surviving spouse, so long as said surviving spouse remains unmarried, shall receive fifty percent (50%) of what the member would have received should he have lived.

(b) Any person coming under the specifications of Section 19 of this act and having reached the age of 66 years, and acquired a service record for 20 years shall receive the same pension as set out in subsection (a) of this section.

Sec. 22. Disability and death benefits. (a) If and in the event any member of the Asheville Fire Department qualifying under this act shall become disabled while acting in the line of his duties or as a result of the performance of duties as a member of the Asheville Fire Department, and is unable to work as a fireman, he shall receive monthly a sum equal to seventy percent (70%) of his monthly salary as then paid by the City of Asheville, said seventy percent (70%) of said monthly salary shall be paid in monthly installments by the board of trustees of the firemen's fund; provided, however, that if under the North Carolina Workmen's Compensation Act he shall receive any payments due to such disability, then the amount of such compensation payment shall be deducted from the amount of his said monthly installment, and there shall be paid from the firemen's fund only such amount as may be required to make up his said monthly installment; provided, further, that if such member of the Asheville Fire Department shall be killed in the line of his duties, or shall die as a result of a disability as defined in this section, the surviving spouse shall receive, so long as said surviving spouse remains unmarried, the same monthly installment as the member would have received under this section; provided, further, that if, under the North Carolina Workmen's Compensation Act such surviving spouse elects to take a lump sum settlement of the amount due on account of the death of the member, then such surviving spouse, so long as said surviving spouse remains unmarried, shall receive from the firemen's fund each month a sum equal to the difference between the monthly installment that would have been received under the Workmen's Compensation Act and the amount of the deceased member's monthly installment, and such payments from the firemen's fund shall continue so long as said surviving spouse remains unmarried.

(b) If any member of the Asheville Fire Department, as set out in this act, becomes disabled not in the line of duty, he shall receive annually a sum equal to three and one-half percent (3 1/2%) of his total earnings from the beginning of his service on the Asheville Fire Department to the time of his disability; provided, however, that three years' service with the Asheville Fire Department is required before any member thereof can take advantage of this section; provided, further, that if such member should die from disability not received in the line of duty, the surviving spouse shall receive one-half of the pension paid to the member at the time of death so long as said surviving spouse remains unmarried.

(c) If any member of the Asheville Fire Department, as set out in this act, shall die leaving no surviving spouse entitled to benefits in accordance with Section 21 or 22 of this act, the funds deducted from such fireman's monthly salary and paid to the firemen's fund shall be paid as follows:

- (1) to the child or children of such fireman in equal shares;
- (2) if there is no surviving child or children, to the designated beneficiary of the fireman, if any;
- (3) if there is no surviving child or children or designated beneficiary, to the executors or administrators of the fireman' estate.

Sec. 23. Reserved.

Sec. 24. Maximum benefits. In no event shall any fireman coming under the provisions of this act, receive annually more than three and one-half percent (3 1/2%) of his total salary for a period of 20 years, as set out in Sections 21 and 22(b) of this act.

Sec. 25. Board of examiners; appeals. (a) The mayor of the City of Asheville shall be the chairman of a board of examiners to determine the claims of firemen claimants under this act; the city manager of the City of Asheville shall be a member of said board; the council of the City of Asheville shall elect for a term of three years beginning on the date of ratification of this act and every three years thereafter a citizen of the City of Asheville who is a medical doctor to be the third member of said board; the Police Department of the City of Asheville shall elect for a term of three years beginning on the date of ratification of this act and every three years thereafter a person who is a member of said police department, who shall not be the police chief, to be the fourth member of said board; the Fire Department of the City of Asheville shall elect for a term of three years beginning on the date of ratification of this act and every three years thereafter a person who is a member of said department, who shall not be the fire chief, to be the fifth member of said board; said third, fourth and fifth members shall serve until their successors are duly elected and qualified and said board shall have the power and authority to determine the claims of said firemen claimants coming under the provisions of this act and their decision shall be reported to the board of trustees for their approval.

(b) The board of trustees shall review the findings of the board of examiners and may approve or reverse the findings of the board of examiners.

(c) Any fireman claimant, his beneficiary or representative whose claim has been denied in whole or in part after review by the board of trustees shall have the right to appeal to the Asheville City Council. Such appeal must be filed by the fireman claimant, his beneficiary or representative in writing with the city clerk within 10 days after receipt of written denial of all or part of the claim by the board of trustees. Such appeal will be heard at a regular weekly city council meeting within six weeks of the filing of the appeal by said fireman claimant, his beneficiary or representative. The decision of the city council shall be final.

(d) The fireman claimant, his beneficiary or representative has the right to file an appeal within 30 days of the city council action outlined in subsection (c) of this section to a court of competent jurisdiction where the issues shall be heard and determined de novo with or without a jury.

Sec. 26. Investment of surplus funds. The board of trustees is hereby authorized and empowered to invest any surplus funds accumulated in what is known as the firemen's fund in obligations of the United States Government or obligations fully guaranteed both as to principal and interest by the United States Government or an agency of the United States Government; obligations of the State of North Carolina and certificates of deposit in any banks and shares of any savings and loan associations or building and loan associations operating in the State of North Carolina or credit unions to the extent insured by the government or an agency of the United States.

Sec. 27. Freezing membership in firemen's fund. From and after the effective date of any ordinance of the Asheville City Council establishing an employee retirement and disability plan covering employees of the City of Asheville assigned to the Asheville Fire Department under the classified service of said city, future employees so assigned to the fire department shall participate in and contribute to such employee retirement and disability plan pursuant to the terms and conditions thereof, and shall not participate in or contribute to the pension plan established by this act; provided, however, that any such employees' retirement and disability plan hereafter established by ordinance of the Asheville City Council shall meet standards of actuarial soundness as required by North Carolina General Statutes 160A-163 and that the city shall contribute such sums of money to said plan as may be required to meet the standards of actuarial soundness as certified by a qualified actuary as defined in North Carolina General Statutes 160A-163(d).

Sec. 28. No provision of this act shall be construed so as to modify in any respect the benefits granted under Chapters 242 and 243 of the 1939 Session Laws, amended by Chapters 310 and 311 of the 1945 Session Laws and Chapters 320 and 322 of the 1955 Session Laws to employees of the Asheville Police Department and the Asheville Fire Department assigned to said departments prior to the effective date of this act or to the effective date of any such employees' retirement and disability plan covering future employees of such departments; provided, however, that employees of said departments covered by this act may within one year after the effective date of any new plan, voluntarily and irrevocably elect in writing to withdraw from participation in said existing plan and to participate in and contribute to the new plan for their department, in which case they shall be entitled to no further benefits of said existing plan and shall be entitled to withdraw all contributions made by them into said plan.

Sec. 29. The board of examiners and the board of trustees heretofore established by this act may be granted additional authority to administer any new plans as the city council of the City of Asheville may deem advisable and authorized by enactment of appropriate ordinances.

Sec. 30. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed to the extent of such conflict.

Sec. 31. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 12th day of April, 1977.