

Sen. Fiscal? Ford 3/18

MAR 5 1986

Place On Calendar

HOUSE FILE 2405
BY COMMITTEE ON LOCAL GOVERNMENT

(Formerly House Study Bill 692)

Passed House, Date 3-13-86 (p. 702) Passed Senate, Date 4-8-86 (p. 1079)

Vote: Ayes 94 Nays 0 Vote: Ayes 41 Nays 2

Approved May 21, 1986

Proposed House 4-16-86 (p. 1513)
93-0

Proposed Senate 4-21-86 (p. 1299)
38-0

A BILL FOR

1 An Act relating to the administration of the local police and
2 fire retirement systems.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2405

1 Section 1. Section 411.5, subsection 1, paragraph e, Code
2 1985, is amended to read as follows:

3 e. Upon Beginning with the effective date of this Act,
4 upon the taking effect of this chapter, the mayor, with the
5 approval of the city council, shall appoint two three citizens
6 who do not hold any other public office, to serve as members
7 of ~~said~~ the boards of trustees; one of whom shall serve until
8 the first Monday in April of the second year, one until the
9 first Monday in April of the third year, and one until the
10 first Monday in April of the fourth year. Thereafter, every
11 ~~second-year; one such citizen shall be so appointed for a~~
12 ~~four-year-term~~ appointments shall be made for four-year terms.

13 Sec. 2. Section 411.5, subsection 14, Code 1985, is
14 amended by striking the subsection.

15 Sec. 3. Section 411.6, subsection 7, paragraph a,
16 unnumbered paragraph 2, Code 1985, is amended to read as
17 follows:

18 A beneficiary retired under ~~the provisions of~~ this
19 paragraph, in order to be eligible for continued receipt of
20 retirement benefits, shall no later than May 15 of each year
21 submit to the board of trustees a copy of the beneficiary's
22 ~~state~~ federal individual income tax return for the preceding
23 year.

24 Sec. 4. Section 411.7, subsection 2, Code 1985, is amended
25 by adding the following new unnumbered paragraph:

26 NEW UNNUMBERED PARAGRAPH. The board of trustees may
27 negotiate a joint agreement under chapter 28E with another
28 board of trustees, a utility board, a city council, or all of
29 these, that provides for the joint investment of moneys under
30 the control of the boards of trustees, the utility board, and
31 the city council. The investment of the moneys is subject to
32 this section and section 452.10 and to the limitations stated
33 in the joint agreement.

34 Sec. 5. NEW SECTION. 411.22 LIABILITY OF THIRD PARTIES -
35 - SUBROGATION.

1 1. If a member receives an injury for which benefits are
2 payable under section 411.6, subsection 5, or section 411.15
3 and if the injury is caused under circumstances creating a
4 legal liability for damages against a third party other than
5 the retirement system, the member or the member's legal
6 representative may maintain an action for damages against the
7 third party. If a member or a member's legal representative
8 commences such an action, the plaintiff member or
9 representative shall serve a copy of the original notice upon
10 the retirement system not less than ten days before the trial
11 of the action, but a failure to serve the notice does not
12 prejudice the rights of the retirement system, and the
13 following rights and duties ensue:

14 a. The retirement system shall be indemnified out of the
15 recovery of damages to the extent of benefit payments made by
16 the retirement system, with legal interest, except that the
17 plaintiff member's attorney fees are not indemnifiable.

18 b. The retirement system has a lien on the damage claim
19 against the third party and on any judgment on the damage
20 claim for benefits for which the retirement system is liable.
21 In order to continue and preserve the lien, the retirement
22 system shall file a notice of the lien within thirty days
23 after receiving a copy of the original notice in the office of
24 the clerk of the district court in which the action is filed.

25 2. If a member fails to bring an action for damages
26 against a third party within thirty days after the retirement
27 system requests the member in writing to do so, the retirement
28 system is subrogated to the rights of the member and may
29 maintain the action against the third party, and may recover
30 damages for the injury to the same extent that the member may
31 recover damages for the injury. If the retirement system
32 recovers damages in the action, the court shall enter judgment
33 for distribution of the recovery as follows:

34 a. A sum sufficient to repay the retirement system for the
35 amount of such benefits actually paid by the retirement system

1 up to the time of the entering of the judgment.

2 b. A sum sufficient to pay the retirement system the
3 present worth, computed at the interest rate provided in
4 section 535.3 for court judgments and decrees, of the future
5 payments of such benefits, for which the retirement system is
6 liable, but the sum is not a final adjudication of the future
7 payments which the member is entitled to receive.

8 c. Any balance shall be paid to the member.

9 3. Before a settlement is effective between a retirement
10 system and a third party who is liable for an injury, the
11 member must consent in writing to the settlement; and if the
12 settlement is between the member and a third party, the
13 retirement system must consent in writing to the settlement;
14 or on refusal to consent, in either case, the district court
15 in the county in which the city and the retirement system is
16 located must consent in writing to the settlement.

17 4. For purposes of subrogation under this section, a
18 payment made to an injured member or the member's legal
19 representative, by or on behalf of a third party or the third
20 party's principal or agent, who is liable for, connected with,
21 or involved in causing the injury to the member, shall be
22 considered paid as damages because the injury was caused under
23 circumstances creating a legal liability against the third
24 party, whether the payment is made under a covenant not to
25 sue, compromise settlement, denial of liability, or is
26 otherwise made.

27 Sec. 6. The term of the third citizen member appointed by
28 the mayor, with the approval of the city council, that expires
29 on June 30 shall be extended until April 30 of the following
30 year.

31 EXPLANATION

32 This bill relates to the administration of the fire and
33 police retirement systems of cities. It changes the term of
34 the third citizen member of the board of trustees from a July
35 1 through June 30 term to a May 1 through April 30 term to

1 correspond with the other members. It strikes the requirement
2 that the cities file actuarial information and verification of
3 payment of the required normal contribution rate with the
4 commissioner of insurance.

5 It requires that members receiving disability payments must
6 file their federal income tax forms rather than their state
7 forms for a determination of their income.

8 It provides for joint agreements for joint investment of
9 fire and police retirement moneys, city utility moneys, and
10 city moneys.

11 The bill also permits a police officer or fire fighter
12 retirement system to seek reimbursement from a third party for
13 compensation benefits and permanent and temporary disability
14 benefits and medical benefits paid to the police officer or
15 fire fighter for on-the-job injuries or death caused by the
16 negligence of the third party.

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Connors
Platt
Poncy

HSB 692

LOCAL GOVERNMENT

HOUSE FILE 2405
BY (PROPOSED COMMITTEE ON LOCAL GOVERNMENT BILL)

Study Bill 692

Local Government: Connors, Chair; Platt and Poncy.

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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7 of said the boards of trustees; one of whom shall serve until
8 the first Monday in April of the second year, one until the
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10 first Monday in April of the fourth year. Thereafter, every
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13 Sec. 2. Section 411.5, subsection 14, Code 1985, is
14 amended by striking the subsection.

15 Sec. 3. Section 411.6, subsection 7, paragraph a,
16 unnumbered paragraph 2, Code 1985, is amended to read as
17 follows:

18 A beneficiary retired under ~~the provisions of~~ this
19 paragraph, in order to be eligible for continued receipt of
20 retirement benefits, shall no later than May 15 of each year
21 submit to the board of trustees a copy of the beneficiary's
22 state federal individual income tax return for the preceding
23 year.

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25 by adding the following new unnumbered paragraph:

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27 negotiate a joint agreement under chapter 28E with another
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4 legal liability for damages against a third party other than
5 the retirement system, the member or the member's legal
6 representative may maintain an action for damages against the
7 third party. If a member or a member's legal representative
8 commences such an action, the plaintiff member or
9 representative shall serve a copy of the original notice upon
10 the retirement system not less than ten days before the trial
11 of the action, but a failure to serve the notice does not
12 prejudice the rights of the retirement system, and the
13 following rights and duties ensue:

14 a. The retirement system shall be indemnified out of the
15 recovery of damages to the extent of benefit payments made by
16 the retirement system, with legal interest, except that the
17 plaintiff member's attorney fees are not indemnifiable.

18 b. The retirement system has a lien on the damage claim
19 against the third party and on any judgment on the damage
20 claim for benefits for which the retirement system is liable.
21 In order to continue and preserve the lien, the retirement
22 system shall file a notice of the lien within thirty days
23 after receiving a copy of the original notice in the office of
24 the clerk of the district court in which the action is filed.

25 2. If a member fails to bring an action for damages
26 against a third party within thirty days after the retirement
27 system requests the member in writing to do so, the retirement
28 system is subrogated to the rights of the member and may
29 maintain the action against the third party, and may recover
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32 recovers damages in the action, the court shall enter judgment
33 for distribution of the recovery as follows:

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35 amount of such benefits actually paid by the retirement system

1 up to the time of the entering of the judgment.

2 b. A sum sufficient to pay the retirement system the
3 present worth, computed at the interest rate provided in
4 section 535.3 for court judgments and decrees, of the future
5 payments of such benefits, for which the retirement system is
6 liable, but the sum is not a final adjudication of the future
7 payments which the member is entitled to receive.

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9 3. Before a settlement is effective between a retirement
10 system and a third party who is liable for an injury, the
11 member must consent in writing to the settlement; and if the
12 settlement is between the member and a third party, the
13 retirement system must consent in writing to the settlement;
14 or on refusal to consent, in either case, the district court
15 in the county in which the city and the retirement system is
16 located must consent in writing to the settlement.

17 4. For purposes of subrogation under this section, a
18 payment made to an injured member or the member's legal
19 representative, by or on behalf of a third party or the third
20 party's principal or agent, who is liable for, connected with,
21 or involved in causing the injury to the member, shall be
22 considered paid as damages because the injury was caused under
23 circumstances creating a legal liability against the third
24 party, whether the payment is made under a covenant not to
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1 correspond with the other members. It strikes the requirement
2 that the cities file actuarial information and verification of
3 payment of the required normal contribution rate with the
4 commissioner of insurance.

5 It requires that members receiving disability payments must
6 file their federal income tax forms rather than their state
7 forms for a determination of their income.

8 It provides for joint agreements for joint investment of
9 fire and police retirement moneys, city utility moneys, and
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16 negligence of the third party.

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SENATE AMENDMENT TO HOUSE FILE 2405

H-5795

1 Amend House File 2405 as follows:

2 1. Page 1, by inserting after line 12 the
3 following:

4 "Sec. ____ . Section 411.5, subsection 8, Code 1985,
5 is amended to read as follows:

6 8. LEGAL ADVISER. The city attorney or solicitor
7 of a city shall serve as the legal adviser of the
8 board of trustees at the request of the board or the
9 board of trustees may employ or retain an attorney.
10 The costs of an attorney employed or retained by the
11 board of trustees shall be paid from the expense fund
12 created in section 411.8."

13 2. Page 1, by striking lines 13 and 14.

14 3. By renumbering, relettering, or redesignating
15 and correcting internal references as necessary.

H-5795 FILED APRIL 10, 1986 RECEIVED FROM THE SENATE

*House amended (5806) + concurred
4/16 (p. 1512)*

HOUSE FILE 2405

H-5806

1 Amend the Senate amendment, H-5795, to House File
2 2405, as passed by the House, as follows:

3 1. Page 1, line 9, by striking the word
4 "attorney." and inserting the following: "attorney on
5 a per diem basis to represent the board of trustees
6 when, in the opinion of the board of trustees, there
7 is a conflict of interest between the board of
8 trustees and the city council."

H-5806 FILED APRIL 11, 1986 BY O'KANE of Woodbury

Adopted 4/16 (p. 1512)

HOUSE AMENDMENT TO
SENATE AMENDMENT TO
HOUSE FILE 2405

S-5710

1 Amend the Senate amendment, H-5795, to House File
2 2405, as passed by the House, as follows:

3 1. Page 1, line 9, by striking the word
4 "attorney." and inserting the following: "attorney on
5 a per diem basis to represent the board of trustees
6 when, in the opinion of the board of trustees, there
7 is a conflict of interest between the board of
8 trustees and the city council."

S-5710 Filed April 18, 1986 REC'D FROM THE HOUSE

Senate concurred 4/21 (p. 1299)

HOUSE FILE 2405

S-5420

1 Amend House File 2405 as passed by the House as
2 follows:

3 1. Page 1, by inserting after line 12 the
4 following:

5 "Sec. ____ . Section 411.5, subsection 8, Code 1985,
6 is amended to read as follows:

7 8. LEGAL ADVISER. The city attorney or solicitor
8 of a city shall serve as the legal adviser of the
9 board of trustees at the request of the board or the
10 board of trustees may employ or retain an attorney.

11 The costs of an attorney employed or retained by the
12 board of trustees shall be paid from the expense fund
13 created in section 411.8."

S-5420 Filed March 20, 1986

BY GETTINGS

Adopted 4/14 (p 1055)

HOUSE FILE 2405

S-5516

1 Amend Senate amendment S-5420 to House File 2405
2 as passed by the House as follows:

3 1. Page 1, line 10, by striking the word "attorney."
4 and inserting the following: "attorney on a per diem
5 basis to represent the board of trustees when in the
6 opinion of the board of trustees there is a conflict
7 of interest between the board of trustees and the
8 city council.".

S-5516 Filed April 1, 1986

BY A. MILLER

Adopted 4/14 (p 1055)

HOUSE FILE 2405

S-5604

1 Amend House File 2405 as follows:

2 1. Page 1, by striking lines 13 and 14.

S-5604 Filed April 4, 1986

BY BRUNER

Adopted 4/8 (p 1099)

HOUSE FILE 2405

AN ACT

RELATING TO THE ADMINISTRATION OF THE LOCAL POLICE AND FIRE RETIREMENT SYSTEMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 411.5, subsection 1, paragraph e, Code 1985, is amended to read as follows:

c. Upon beginning with the effective date of this Act, upon the taking effect of this chapter, the mayor, with the approval of the city council, shall appoint two three citizens who do not hold any other public office, to serve as members of said the boards of trustees; one of whom shall serve until the first Monday in April of the second year, one until the first Monday in April of the third year, and one until the first Monday in April of the fourth year. Thereafter, every second-year, one such citizen shall be so appointed for a four-year term appointments shall be made for four-year terms.

Sec. 2. Section 411.5, subsection 8, Code 1985, is amended to read as follows:

8. LEGAL ADVISER. The city attorney or solicitor of a city shall serve as the legal adviser of the board of trustees at the request of the board or the board of trustees may employ or retain an attorney on a per diem basis to represent the board of trustees when, in the opinion of the board of trustees, there is a conflict of interest between the board of trustees and the city council. The costs of an attorney employed or retained by the board of trustees shall be paid from the expense fund created in section 411.8.

Sec. 3. Section 411.6, subsection 7, paragraph a, unnumbered paragraph 2, Code 1985, is amended to read as follows:

A beneficiary retired under the provisions of this paragraph, in order to be eligible for continued receipt of retirement benefits, shall no later than May 15 of each year submit to the board of trustees a copy of the beneficiary's state federal individual income tax return for the preceding year.

Sec. 4. Section 411.7, subsection 2, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The board of trustees may negotiate a joint agreement under chapter 28E with another board of trustees, a utility board, a city council, or all of these, that provides for the joint investment of moneys under the control of the boards of trustees, the utility board, and the city council. The investment of the moneys is subject to this section and section 452.10 and to the limitations stated in the joint agreement.

Sec. 5. NEW SECTION. 411.22 LIABILITY OF THIRD PARTIES - SUBROGATION.

1. If a member receives an injury for which benefits are payable under section 411.6, subsection 5, or section 411.15 and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the member or the member's legal representative may maintain an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the retirement system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the retirement system, and the following rights and duties ensue:

a. The retirement system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the retirement system, with legal interest, except that the plaintiff member's attorney fees are not indemnifiable.

b. The retirement system has a lien on the damage claim against the third party and on any judgment on the damage

claim for benefits for which the retirement system is liable. In order to continue and preserve the lien, the retirement system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

2. If a member fails to bring an action for damages against a third party within thirty days after the retirement system requests the member in writing to do so, the retirement system is subrogated to the rights of the member and may maintain the action against the third party, and may recover damages for the injury to the same extent that the member may recover damages for the injury. If the retirement system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

a. A sum sufficient to repay the retirement system for the amount of such benefits actually paid by the retirement system up to the time of the entering of the judgment.

b. A sum sufficient to pay the retirement system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits, for which the retirement system is liable, but the sum is not a final adjudication of the future payments which the member is entitled to receive.

c. Any balance shall be paid to the member.

3. Before a settlement is effective between a retirement system and a third party who is liable for an injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the retirement system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which the city and the retirement system is located must consent in writing to the settlement.

4. For purposes of subrogation under this section, a payment made to an injured member or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury to the member, shall be

considered paid as damages because the injury was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

Sec. 6. The term of the third citizen member appointed by the mayor, with the approval of the city council, that expires on June 30 shall be extended until April 30 of the following year.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2405, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved *9 May 21* 1986

TERRY E. BRANSTAD
Governor