

LEGISLATIVE BILL 849

Approved by the Governor May 27, 1999

Introduced by Hartnett, 45; Janssen, 15; Smith, 48; Bruning, 3; Byars, 30;
Dw. Pedersen, 39; Engel, 17

AN ACT relating to emergency services; to amend sections 35-508 and 35-513, Reissue Revised Statutes of Nebraska, and section 84-1503, Revised Statutes Supplement, 1998; to adopt the Volunteer Emergency Responders Recruitment and Retention Act; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Sections 1 to 30 of this act shall be known and may be cited as the Volunteer Emergency Responders Recruitment and Retention Act.

Sec. 2. (1) The Legislature recognizes that volunteer firefighters and rescue squad personnel have provided fire suppression and emergency response services to their local communities for over a century at only a fraction of the cost to the taxpayers which would have resulted from implementing a system of paid fire departments and rescue squad services. Many cities, villages, and rural areas could not afford the cost of maintaining their current level of emergency response services without the presence of a local pool of committed and dedicated volunteer firefighters and volunteer rescue squad personnel. It is necessary for the public health, safety, and welfare of the people in many Nebraska communities to encourage the recruitment and retention of such individuals as volunteer emergency responders.

(2) The Legislature finds that the duties and responsibilities of the volunteer personnel in fire departments and rescue squads in the State of Nebraska have become increasingly complex and time-consuming, requiring an ever higher degree of dedication to cope with new challenges and technological change. The Legislature recognizes that volunteer fire departments and rescue squads must encourage a high level of training and professionalism among their volunteer personnel in order to respond to these increasingly complex and hazardous responsibilities.

(3) The Legislature finds that Nebraska communities which rely on volunteers to provide fire protection and emergency response services are faced with numerous economic and demographic trends and conditions which make the recruitment and retention of qualified volunteers increasingly difficult and that, as a consequence, some volunteer departments are trying to cope with declining rosters of active volunteers.

(4) The Legislature finds that the recruitment and retention of qualified men and women in emergency response capacities in volunteer fire departments is a matter of statewide as well as local concern and that it is appropriate for the state to assist local political subdivisions in achieving that goal. Further, the Legislature finds that the expenditure of local tax revenue for purposes of the Volunteer Emergency Responders Recruitment and Retention Act will significantly benefit the public health, safety, and welfare in participating cities, villages, counties, and fire protection districts and that such expenditures are for a public purpose.

(5) Therefor, the Legislature finds that cities of the first class, cities of the second class, villages, and rural and suburban fire protection districts should be encouraged and assisted in their efforts to retain trained and qualified volunteer fire safety, rescue squad, and emergency response personnel to serve their local communities and should be granted the authority to participate in a local option incentive program designed to provide for the payment of service award benefits which reward the length of service of active volunteer members of volunteer fire departments and volunteer rescue squads. It is the intent of the Legislature that such programs will be developed, organized, structured, and administered to satisfy the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as modified by the Small Business Job Protection Act of 1996 so as to insure that benefits received by participants will not be subject to taxation until actually distributed at age sixty-five or as otherwise provided in the Volunteer Emergency Responders Recruitment and Retention Act.

Sec. 3. For purposes of the Volunteer Emergency Responders Recruitment and Retention Act:

(1) Active emergency responder means a person who has been approved by the duly constituted authority in control of a volunteer department as a

volunteer member of the department who is performing service as both a firefighter and on a rescue squad in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by the board;

(2) Active rescue squad member means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as part of a rescue squad in the protection of life or health from emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by the board;

(3) Active volunteer firefighter means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as a firefighter in the protection of life or property from fire or other emergency, accident, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by the board;

(4) Annual account means a separate account of a city, village, or rural or suburban fire protection district conducting a service award benefit program established for each year of service in which such program is being conducted to which is credited all funds, from whatever source, furnished for the purpose of providing service award benefits to qualifying participants in the service award benefit program during that year of service, with the funds in the account to be held in trust and invested for ultimate payment as service award benefits to those qualifying participants;

(5) Board means the Volunteer Service Award Benefit Review Board;

(6) City of the first class, city of the second class, village, rural fire protection district, and suburban fire protection district means such political subdivisions as they are defined in statute, and when such political subdivisions are granted authority pursuant to the Volunteer Emergency Responders Recruitment and Retention Act to engage in any conduct authorized by the act, the use of these terms shall be construed to mean and include any combination of two or more of these political subdivisions acting in concert pursuant to an agreement entered into under the terms of the Interlocal Cooperation Act;

(7) Emergency response services means the services provided by a volunteer department in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity;

(8) Nonforfeitable means the unconditional and legally enforceable right by a participant or beneficiary to receive service award benefits pursuant to a service award benefit program at the entitlement age or under the circumstances specified in the Volunteer Emergency Responders Recruitment and Retention Act;

(9) Participant means an active emergency responder, active rescue squad member, or active volunteer firefighter who is currently eligible or who will, upon the completion of the requirements of the act, be eligible to receive a service award benefit;

(10) Service award benefit program means a program established, governed, administered, and maintained pursuant to the act which provides service award benefits for active emergency responders, active rescue squad members, and active volunteer firefighters, as provided for in the act, for each year of active service, as defined by the standard criteria for qualified active service, and which program meets the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as modified by the Small Business Job Protection Act of 1996;

(11) Standard criteria for qualified active service means the initial report and any subsequent annual amendments formally adopted by the board pursuant to the Volunteer Emergency Responders Recruitment and Retention Act which establish the minimum annual service requirements for the qualification of a volunteer member of a volunteer department as an active emergency responder, active rescue squad member, or active volunteer firefighter so as to enable such person to participate in a service award benefit program;

(12) Unallocated contributions means that portion of an annual account representing the proportionate equal shares of (a) the principal amount of all contributions from whatever source deposited into the annual

account for such year of service and (b) all income derived therefrom, attributable to participants listed on the certification list for that year of service who have subsequently ceased to be volunteers or participants and, in consequence, failed to qualify for a service award benefit as provided in section 12 or 13 of this act;

(13) Volunteer means a person who meets the requirements necessary to qualify as a bona fide volunteer as defined in section 457(e)(11)(B)(i) of the Internal Revenue Code and who, on behalf of and at the request or with the permission of a city, village, or rural or suburban fire protection district, engages in activities related to fire protection, fire suppression, or emergency response for the purpose of protecting human life, health, or property for which activities the person receives no remuneration;

(14) Volunteer department means any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting human life, health, or property; and

(15) Year of service means the period from July 1 through the following June 30 in which the services and activities of a volunteer member of a volunteer department are monitored to determine if the volunteer qualifies for certification by the duly constituted authority of the volunteer department as meeting the standard criteria for qualified active service.

Sec. 4. (1) The Volunteer Service Award Benefit Review Board is created. The board shall consist of the following nine members, three from each congressional district, appointed by the Governor with the approval of the Legislature:

(a) At least one elected member of the governing body of each of the following political subdivisions: A city of the first class; a city of the second class; a village; a rural fire protection district; and a suburban fire protection district. No elected member of the governing body of a political subdivision shall be appointed to the board unless his or her political subdivision places its primary reliance for emergency response services upon a volunteer department; and

(b) Two volunteers engaged primarily in fire protection or fire suppression and two volunteers engaged primarily in rescue squad services, at least three of whom shall be from different congressional districts. The volunteer fire protection or fire suppression and rescue squad service members shall each have been members of their respective volunteer departments for a period of not less than five years at the time of their appointment to the board.

(2) The members shall be appointed for one-year terms beginning July 15, 1999. All vacancies shall be filled for the balance of the unexpired term in the same manner as the initial appointments. A vacancy exists when a board member dies, resigns, or ceases to have the requisite qualifications for the seat on the board for which he or she was appointed. Members of the board shall not receive any compensation for their services on the board, but each member shall be reimbursed for his or her actual and necessary expenses as provided in sections 81-1174 to 81-1177. The board shall cease its existence on July 15, 2000.

Sec. 5. No later than February 1, 2000, the board shall complete and adopt, by majority vote of its appointed members, the initial standard criteria for qualified active service and the requirements necessary for any participant in a service award benefit program to qualify as a bona fide volunteer as defined in section 457(e)(11)(B)(i) of the Internal Revenue Code.

Sec. 6. In determining the minimum requirements for qualifying a volunteer as an active emergency responder, active rescue squad member, or active volunteer firefighter, the board shall consider the normal, usual, and regular duties and activities engaged in by volunteers in each of the active classes and the amount of time commonly spent by the average volunteer engaged in such duties and activities. These duties and activities shall include, but not be limited to, participation in training courses as a trainee or instructor, participation in drills, service in sleep-in or stand-by capacities, service as an elected or appointed officer of a volunteer department, attendance at official volunteer department business meetings, repairing, maintaining, or cleaning equipment, and participation in emergency responses. Based upon its inquiries and determinations, the board shall develop a point system, allocating a number of points for each duty or activity and the amount of time involved in its performance, giving due weight to the relative importance of different duties and activities as they relate to the principal mission of the volunteer with regard to the enhancement of the public health, safety, and welfare. Having established the point system,

the board shall determine the minimum base number of points necessary to qualify a volunteer as an active emergency responder, active rescue squad member, or active volunteer firefighter during a year of service. The board may adopt a recommended set of practices and procedures to be used in tallying, recording, verifying, and auditing the points earned by volunteers.

Sec. 7. The board may classify volunteer departments by standard criteria on a uniform basis to recognize the actual and material differences between volunteer departments as those differences are reflected in and influence the duties and activities of their volunteer members. In adopting standard classification criteria, the board may consider the following factors: The size of the area served by the volunteer department, the density of the population in the area, the amount of residential valuation in the area, the amount of commercial, industrial, or agricultural valuation in the area, the ratio of residential to commercial, industrial, or agricultural valuation in the area, the average number of annual emergency responses and the nature of such responses, the number of volunteer members in the volunteer department, the ratio of volunteer members in the volunteer department to the total population in the area served, and any other relevant factors which exercise a significant influence on the workload of the volunteer department. If the board adopts a classification system for volunteer departments as provided for in this section, the board shall use such classification system in the standard criteria for qualified active service as the basis for a different point system for active emergency responders, active rescue squad members, and active volunteer firefighters in each class of volunteer departments.

Sec. 8. Prior to the board's adoption of standard criteria for qualified active service, the board shall hold at least one public hearing at a central location in each of the state's three congressional districts to solicit public comment and review of its proposals.

Sec. 9. (1) After March 1, 2000, any city of the first class, city of the second class, village, rural fire protection district, or suburban fire protection district which places its primary reliance for emergency response services upon a volunteer department may adopt a service award benefit program as provided in the Volunteer Emergency Responders Recruitment and Retention Act. A service award benefit program shall only begin on July 1, 2000, or on July 1 of any subsequent year.

(2) No city, village, or fire protection district shall be required to adopt a service award benefit program. Nothing in the act shall be construed to mandate the creation of a service award benefit program in any city, village, or fire protection district. The act shall not be construed to prohibit any city, village, or fire protection district from ending or eliminating any service award benefit program after its adoption, except that a city, village, or fire protection district may not end its program or its responsibility under its program with regard to any year of service completed prior to such elimination.

(3) Each service award benefit program shall include provisions governing the procedures to be followed in the tallying, recording, verifying, and auditing of points earned by volunteers and provisions which provide for the collection of such other information regarding participants as may be requested by the State Fire Marshal to facilitate administration of the program.

(4) The board shall develop a model ordinance or resolution for the adoption of a service award benefit program to be used by cities, villages, and rural and suburban fire protection districts in the creation of their programs.

Sec. 10. Each volunteer department serving a city, village, or rural or suburban fire protection district conducting a service award benefit program shall designate one member of the department to serve as the certification administrator. The designation of such individual as the certification administrator shall be confirmed and approved by the governing body of that city, village, or rural or suburban fire protection district. It shall be the duty of the certification administrator to keep and maintain records on the activities of all volunteer members and participants and award points for such activities based upon the standard criteria for qualified active service. Each volunteer member and participant shall be provided by the certification administrator with notice of the total points he or she has accumulated during the immediately preceding six-month period from July 1 to December 31 on January 15, and from January 1 to June 30 on July 15. No later than August 1 of each year following the first year of service during which a service award benefit program has been in existence, the certification administrator shall forward to the governing body of the city, village, or fire protection district a report specifying the name of each volunteer member

of the volunteer department, the number of points accumulated by each volunteer during the year of service, and the names of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. At the time of the filing of the report, each volunteer member of the department whose name does not appear on the list of qualified volunteers shall be informed of such fact in writing by the certification administrator by mailing the same by first class United States mail, postage prepaid. No sooner than August 15 nor later than September 1 of each year following the first year of service during which a service award benefit program has been in existence, the governing body of the city, village, or fire protection district conducting the program shall formally approve and certify the list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. Any volunteer member whose name does not appear on the approved certification list may, prior to August 15, appeal in writing to the governing body to have his or her name added to the certification list by filing the same with the clerk of the governing body. The appeal shall set out the basis upon which the volunteer believes he or she should be placed upon the certification list and shall specify whether or not a public hearing is requested. If requested by the appealing party, the governing body shall hold a public hearing on the appeal prior to or upon the date upon which the certification list is approved. The governing body shall designate an appropriate person to investigate the appeal and report on its merits to the governing body which shall, by majority vote, add the name of the person to the certification list if there is sufficient evidence to indicate that the individual performed sufficient activities or services to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter as provided in the standard criteria for qualified active service during the prior year of service. The decision of the governing body may be appealed to the district court of the county in which the volunteer member resides.

Sec. 11. Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall file with the State Fire Marshal a copy of each certification list for the immediately preceding year of service no later than October 15. No later than January 31, 2001, and no later than each succeeding January 31, each city, village, or rural or suburban fire protection district conducting a service award benefit program shall file with the State Fire Marshal a report specifying the number of volunteer members of the volunteer department serving the city, village, or fire protection district that have accumulated at least one-half of the number of points necessary to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter during the period from the immediately preceding July 1 to December 31. The State Fire Marshal shall tabulate the total of all such volunteers as reported by all cities, villages, and rural and suburban fire protection districts conducting service award benefit programs and shall report the total number to the Clerk of the Legislature for distribution to the members of the Legislature no later than February 15, 2001, and no later than each succeeding February 15.

Sec. 12. (1) Except as provided in section 13 of this act, service award benefits provided under a service award benefit program shall be paid to a participant only upon the date he or she reaches the age of sixty-five or upon July 1 after the first year of service in which such participant was not on the certification list of his or her volunteer department, whichever is later, if the participant has been an active emergency responder, active rescue squad member, or active volunteer firefighter for not less than ten consecutive years of service.

(2) Upon the completion of ten consecutive years of service, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

Sec. 13. (1)(a) Service award benefits shall be paid to a participant as provided in subsection (1) of section 12 of this act notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for ten consecutive years of service if such participant has qualified as an active emergency responder, active rescue squad member, or active volunteer firefighter in ten years of service out of eleven consecutive years of service if in the year of service in which such participant did not qualify such failure was due (i) to a period during the year of service in the armed forces

of the United States upon active duty or (ii) to an injury or disability incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department.

(b) Upon the completion of ten years of service pursuant to this subsection, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (i) the principal amount of all contributions deposited into the annual account for such year of service and (ii) all income derived therefrom.

(2) Service award benefits shall be paid to a participant as provided in subsection (1) of section 12 of this act notwithstanding that such participant had not been an active emergency responder, active rescue squad member, or active volunteer firefighter for ten consecutive years of service if such participant suffered a permanent disability resulting from an injury incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department which disqualified the participant from further service as a volunteer. At the time such disability is confirmed and certified to the governing body of the city, village, or rural or suburban fire protection district conducting the service award benefit program, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(3) Service award benefits shall be paid to the beneficiary of a participant notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for ten consecutive years of service if such participant dies in the course of his or her active service as a volunteer member of a volunteer department or dies as the result of injuries incurred by the participant directly related to his or her duties or activities as a volunteer member of a volunteer department. At the time of the participant's death, the beneficiary of the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which the participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(4) Service award benefits shall be paid to the beneficiary of a participant upon the death of a participant notwithstanding that such participant had not reached the age of sixty-five if such participant would have been entitled to receive service award benefits at age sixty-five pursuant to subsection (1) of section 12 of this act or subsection (1) or (2) of this section.

Sec. 14. Any participant in a service award benefit program who ceases to be a volunteer or participant and consequently fails to qualify for a service award benefit pursuant to section 12 or 13 of this act shall forfeit all rights to any future distribution of any portion of the principal amount of any contributions made to an annual account for any service year in which such participant was on the certification list and any income derived from such contributions.

Sec. 15. Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall establish an annual account for each year of service in which such program is being conducted. All funds from whatever source furnished for the purpose of providing service award benefits to active emergency responders, active rescue squad members, and active volunteer firefighters participating in the service award benefit program during a year of service shall be placed into the annual account for that year of service.

Sec. 16. (1) Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall appropriate for the annual account for each year of service in which such program is in existence a sum equal to not less than one hundred dollars times the number of participants listed on the certification list for that year of service. No later than October 15 immediately succeeding the end of the year of service for which such deposit is to be made, the city, village, or rural or suburban fire protection district shall deposit the annual account with the State Treasurer.

(2) The total amount of all contributions from all sources made to

any annual account shall not exceed three thousand dollars times the number of participants listed on the certification list for the year of service covered by that annual account. The service award benefit paid to a qualifying participant or beneficiary shall not include in any participant's share of an annual account any contributions made to the annual account for that year of service which are allocable to the participant or beneficiary in excess of the sum of three thousand dollars and any income derived from the investment of those excess sums.

(3) No city, village, or rural or suburban fire protection district conducting a service award benefit program shall incur any obligation or liability with regard to contributions into any annual account under such program beyond the amount of contributions actually appropriated by such local political subdivision for such purpose and actually distributed into such accounts.

Sec. 17. (1) The service award benefit received by a qualifying participant or beneficiary shall, at the option of the recipient, be in the form of an annuity or lump-sum benefit. No portion of any annual account shall be subject to attachment, garnishment, execution, or other judicial process for the satisfaction of a debt or claim against any participant or beneficiary and assignments or transfers of any portion shall be void.

(2) The service award benefit paid to a participant or beneficiary qualifying pursuant to section 12 or 13 of this act shall be the participant's or beneficiary's nonforfeitable share of all annual accounts upon the date of his or her qualification for the service award benefit.

Sec. 18. No participant in a service award benefit program shall participate in or receive a service award benefit from more than one service award benefit program. Any person who is a paid member of a fire department or other emergency response organization and who receives retirement benefits in consequence of such employment shall not be eligible to participate in any service award benefit program being conducted by the same city, village, or rural or suburban fire protection district which employs the person or which contracts for emergency response services with the fire department or emergency response organization which employs the person.

Sec. 19. The participation of a volunteer in any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and his or her receipt of service award benefits pursuant to such a program shall not for that cause alone alter the relationship of such volunteer to the city, village, or rural or suburban fire protection district as being one of a volunteer for purposes of the Nebraska Workers' Compensation Act.

Sec. 20. Any city, village, or rural or suburban fire protection district conducting a service award benefit program shall, within thirty days after the adoption of a program, provide all volunteers providing its local political subdivision with emergency response services with a summary of the program's provisions, including the program's provisions relating to participation and the applicable standard criteria for qualified active service, the manner in which nonforfeitable interests in annual accounts are obtained, the amount of all contributions to the annual account, and any other information relating to participation in the program. The city, village, or rural or suburban fire protection district shall provide copies of the summary to all new volunteer members and to any applicant for membership to the volunteer department. Any material modification to the program shall be provided in writing to all participants within thirty days after its adoption by the city, village, or rural or suburban fire protection district. No later than December 1 of each year following the end of the first full year of service after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall provide to each participant listed in the certification list for that year of service a summary and copy of the relevant documents relating to the contributions to the annual account for such year of service and any other relevant documents or information provided by the Public Employees Retirement Board, the administrator of the program, or the State Fire Marshal. By December 1 of each subsequent year, the city, village, or rural or suburban fire protection district shall provide each participant who appears for the first time in the certification list for the immediately preceding year of service with the same information. All documents relating to any program, the certification lists, the annual accounts, the investment of the funds of the annual accounts, the contributions to the account and the income derived therefrom, and the identity of the administrator of the annual accounts shall be public records within the meaning of section 84-712.01.

Sec. 21. (1) Within thirty days after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection

district shall notify the State Fire Marshal of such fact and file with the State Fire Marshal copies of the program documentation.

(2) Within thirty days after the adoption of any material modification to the program, including any change of certification administrator, the city, village, or rural or suburban fire protection district shall notify the State Fire Marshal of such fact and file with the State Fire Marshal copies of the appropriate documentation of the change.

Sec. 22. Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is conducting a service award benefit program, the annual accounts and certification lists of the city, village, or rural or suburban fire protection district which has ceased to exist shall be transferred and merged with the annual accounts and certification lists of the other city, village, or rural or suburban fire protection district. For purposes of the Volunteer Emergency Responders Recruitment and Retention Act, the prior participation of volunteers in the program of the city, village, or rural or suburban fire protection district which has ceased to exist up to the date upon which such body ceased to exist shall be treated as if the participation had been in the program of the other city, village, or rural or suburban fire protection district.

Sec. 23. Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is not conducting a service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceased to exist shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed, notwithstanding that the person may not have qualified pursuant to sections 12 and 13 of this act, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 12 and 13 of this act.

Sec. 24. (1) All deposits made to annual accounts under any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act, all property and rights purchased with such deposits, and all investment income, property, or rights attributable to such deposits shall be held in trust for the exclusive benefit of participants and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of a program and the act. All such assets held in trust shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall be the custodian of the funds and securities of such service award benefit programs and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duly authorized by the Public Employees Retirement Board. The State Treasurer shall furnish annually to the Public Employees Retirement Board a sworn statement of the amount of the funds in his or her custody belonging to service award benefit programs, which statement shall be as of the calendar year ending December 31 of each year.

(3) All deposits made to annual accounts under service award benefit programs, all property and rights purchased with the deposits, and all investment income, property, or rights attributable to such deposits under the Volunteer Emergency Responders Recruitment and Retention Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

Sec. 25. The State Fire Marshal shall keep a complete record of all participants in service award benefit programs with respect to name, current address, age, the volunteer department in which the participant serves, the years in which the participant was listed on the certification list for the department, the amount of any contributions made to an annual account in any year in which the participant was on the certification list, and any other facts as may be necessary in the administration of the Volunteer Emergency Responders Recruitment and Retention Act. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate. The State Fire Marshal shall provide, in a timely manner, all such records and information to the Public

Employees Retirement Board as are necessary to its administrative functions and shall provide such additional information as may be requested by the Public Employees Retirement Board for those purposes.

Sec. 26. The Public Employees Retirement Board may enter into an administrative services agreement with an appropriate organization authorized to conduct business in Nebraska to administer the service award benefit programs provided for in the Volunteer Emergency Responders Recruitment and Retention Act. No such agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state, the participating cities, villages, and fire protections districts, and the participants in such programs.

Sec. 27. The agreement authorized by section 26 of this act shall provide:

(1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and amounts as directed by the state whether on account of disability, death, the termination of a program, or the attainment of the appropriate age by a qualifying participant;

(2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;

(3) That the organization shall furnish to the Public Employees Retirement Board a statement of all disbursements and withholdings as stipulated in the agreement on at least an annual basis, as agreed by the parties;

(4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;

(5) For the right of the state, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;

(6) Protection to the state against assignment of the agreement or the subletting of work done or services furnished under the agreement;

(7) For termination of the agreement; and

(8) Such other terms as may be agreed upon and which the Public Employees Retirement Board determines to be in the best interest of the state, the participating cities, villages, and fire protections districts, and the participants in such programs.

Sec. 28. All expenses necessary in connection with the administration and operation of the service award benefit programs authorized in the Volunteer Emergency Responders Recruitment and Retention Act shall be paid from the Nebraska Service Award Benefit Expense Fund, which fund is created. The fund shall be credited with all unallocated contributions and the proportionate share of administration expenses from service award benefit program assets and income as directed by the Public Employees Retirement Board for the proper administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 29. Whenever a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to conduct the service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceases to conduct such a program shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed on the certification list, notwithstanding that the person may not have qualified pursuant to sections 12 and 13 of this act, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 12 and 13 of this act.

Sec. 30. All unallocated contributions shall be deposited in the Nebraska Service Award Benefit Expense Fund.

Sec. 31. Section 35-508, Reissue Revised Statutes of Nebraska, is amended to read:

35-508. The board of directors shall have the following general powers:

(1) To determine a general fire protection and rescue program for the district;

(2) To make an annual estimate of the probable expense for carrying out such program;

(3) To annually certify such estimate to the county clerk in the

manner provided by section 35-509;

- (4) To manage and conduct the business affairs of the district;
- (5) To make and execute contracts in the name of and on behalf of the district;
- (6) To buy real estate when needed for the district and to sell real estate of the district when the district has no further use for it;
- (7) To purchase or lease such firefighting and rescue equipment, supplies, and other real or personal property as necessary and proper to carry out the general fire protection and rescue program of the district;
- (8) To incur indebtedness on behalf of the district;
- (9) To authorize the issuance of evidences of the indebtedness permitted under subdivision (8) of this section and to pledge any real or personal property owned or acquired by the district as security for the same;
- (10) To organize, establish, equip, maintain, and supervise a paid, volunteer, or combination paid and volunteer fire department or company to serve the district and to establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act;
- (11) To employ and compensate such personnel as necessary to carry out the general fire protection and rescue program of the district;
- (12) To authorize the execution of a contract with the Game and Parks Commission or a public power district for fire protection of property of the commission or public power district located in or adjacent to the rural or suburban fire protection district;
- (13) To levy a tax not to exceed ten and one-half cents on each one hundred dollars in any one year upon the taxable value of all taxable property within such district subject to section 77-3443, in addition to the amount of tax which may be annually levied to defray the general and incidental expenses of such district, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of district buildings to house equipment or personal belongings of a fire department, for the purchase of firefighting and rescue equipment or apparatus, for the acquisition of any land incidental to such purposes, or for payment of principal and interest on any evidence of indebtedness issued pursuant to subdivisions (8) and (9) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy;
- (14) To adopt and enforce fire codes and establish penalties at annual meetings, except that the code must be available prior to annual meetings and notice shall so provide; and
- (15) Generally to perform all acts necessary to fully carry out the purposes of sections 35-501 to 35-517.

Sec. 32. Section 35-513, Reissue Revised Statutes of Nebraska, is amended to read:

35-513. (1) Any rural or suburban fire protection district may elect to enter into a contract with another rural or suburban fire protection district to consolidate or cooperate for mutual fire protection and prevention purposes, or may enter into a contract with an incorporated city or village for fire protection service or fire protection cooperation, upon terms suitable to all concerned, and power to make such contracts is hereby conferred upon such city or village in addition to such other powers as have been heretofore provided by law.

(2) A rural or suburban fire protection district may establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and may appropriate and expend funds for the cost of any such program for volunteer members of a volunteer department of a city of the first or second class or village or other rural or suburban fire protection district with which the district has a contract for emergency response services.

Sec. 33. Section 84-1503, Revised Statutes Supplement, 1998, is amended to read:

84-1503. (1) It shall be the duty of the Public Employees Retirement Board:

(a) To administer the retirement systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act. The agency for the administration of the retirement systems and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems;

(b) To appoint a director to administer the systems under the direction of the board. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The director shall be

qualified by training and have at least five years of experience in the administration of a qualified public or private employee retirement plan. The director shall not be a member of the board. The salary of the director shall be set by the board. The director shall serve without term and may be removed by the board;

(c) To provide for an equitable allocation of expenses among the retirement systems administered by the board, and all expenses shall be provided from the investment income earned by the various retirement funds unless alternative sources of funds to pay expenses are specified by law;

(d) To administer the deferred compensation program authorized in section 84-1504;

(e) To hire an attorney, admitted to the Nebraska State Bar Association, to advise the board in the administration of the retirement systems listed in subdivision (a) of this subsection;

(f) To adopt and implement reporting standards which shall ensure the accuracy, timeliness, and verifiability of information which is received from agencies, counties, school districts, and other public entities whose employees participate in retirement systems administered by the board. The board shall adopt and promulgate rules and regulations and prescribe such forms necessary to carry out this subdivision; ~~and~~

(g) To administer the service award benefit programs authorized in the Volunteer Emergency Responders Recruitment and Retention Act; and

(h) To prescribe and furnish forms for the public retirement system plan reports required to be filed pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987 and to notify the Nebraska Retirement Systems Committee of the Legislature of the failure of any governmental entity to file such reports.

(2) In administering the retirement systems listed in subdivision (1)(a) of this section, it shall be the duty of the board:

(a) To determine the prior service annuity, if any, for each person who is an employee of the county on the date of adoption of the retirement system;

(b) To determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of a dispute between an individual and the individual's employer;

(c) To adopt and promulgate rules and regulations for the management of the board;

(d) To keep a complete record of all proceedings taken at any meeting of the board;

(e) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in the administration and development of the retirement systems. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the requesting entity, results are provided to the board upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The term of the contract shall be for up to three years. A competitive, formal, and sealed bidding process shall be completed at least once in every three years. An actuary under contract for the State of Nebraska shall be a member of the American Academy of Actuaries;

(f) To direct the State Treasurer to transfer funds, as an expense of the retirement systems, to the Legislative Council Retirement Study Fund. Such transfer shall occur beginning on or after July 31, 1992, and at intervals of not less than ten years and not more than fifteen years and shall be in such amounts as the Legislature shall direct, except that up to seventy-five thousand dollars may be transferred in FY1993-94 to assist in completing the study authorized in Legislative Resolution 328, Ninety-second Legislature, Second Session, 1992;

(g) To adopt and promulgate rules and regulations to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which shall include, but not be limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers;

(h) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 1997, and every four years thereafter. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be

limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. The written audit report shall be given to the Governor, the board, and the Nebraska Retirement Systems Committee and shall be presented to the committee at a public hearing;

(i) To adopt and promulgate rules and regulations for the adjustment of contributions or benefits, which shall include, but not be limited to: (i) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (ii) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment to contributions or benefits; and (iii) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment to contributions or benefits; and

(j) To administer all retirement system plans in a manner which will maintain each plan's status as a qualified plan pursuant to the Internal Revenue Code. The board shall adopt and promulgate rules and regulations necessary or appropriate to maintain such status including, but not limited to, rules or regulations which restrict discretionary or optional contributions to a plan or which limit distributions from a plan.

(3) The board and the Nebraska Investment Council shall jointly have an analysis made of the investment return that has been achieved on the assets of each retirement system administered by the board. The analysis shall be prepared annually as of January 1. The analysis shall be prepared by an independent private organization which has demonstrated expertise to perform this type of analysis and which is unrelated to any organization offering investment advice or providing investment management services to the retirement system. The analysis may be waived jointly by the board and the council for any retirement system with assets of less than ten million dollars. A copy of the analysis shall be given to the board, the council, and the Nebraska Retirement Systems Committee. By March 1 of each year, the analysis shall be presented to the Nebraska Retirement Systems Committee.

(4) By March 1 of each year, the board shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee at a public hearing. The plan shall include, but not be limited to, the board's funding policy, member education and informational programs, the director's duties and the limits on his or her authority, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

Sec. 34. Sections 31 and 36 of this act become operative on July 1, 1999. The other sections of this act become operative on their effective date.

Sec. 35. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 36. Original section 35-508, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 37. Original section 35-513, Reissue Revised Statutes of Nebraska, and section 84-1503, Revised Statutes Supplement, 1998, are repealed.

Sec. 38. Since an emergency exists, this act takes effect when passed and approved according to law.