

# **Pension Law**

## **Fire and Police Pension Fund**

San Antonio



DEDICATED TO PROVIDING RETIREMENT SECURITY FOR  
FIRE FIGHTERS AND POLICE OFFICERS  
PAST, PRESENT, AND FUTURE

As Amended  
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## **PREFACE**

The Pension Fund is established and governed by Article 6243o, Vernon's Texas Civil Statutes (the "Pension Law"). The Texas Legislature last amended the Pension Law during the 81<sup>st</sup> Regular Session, with those changes becoming effective on October 1, 2009. The entirety of the Pension Law effective as of October 1, 2009 is set out below.

## **ARTICLE 1. GENERAL PROVISIONS**

### **SECTION 1.01. PURPOSE.**

The purpose of the fund is to provide for the protection of pensions in a municipality to which this Act applies for fire fighters and police officers and their beneficiaries because of the hazardous nature of the professions of fire fighting and law enforcement.

### **SECTION 1.02. DEFINITIONS.**

In this Act:

(1) "Active member" means a fire fighter or a police officer who is a current contributing member of the fund.

(1-a) "Alternate payee" has the meaning assigned by Section 804.001, Government Code, or any successor statute.

(2) "Average total salary" means the aggregate total salary, as defined by Subdivision (17) of this section, received by a member during the three years of the five-year period ending on the date of the member's service or disability retirement or death in which the member's total salary is highest, divided by three.

(3) "Beneficiary" means the surviving spouse, dependent child, or dependent parent of a deceased member or retiree.

(4) "Board" means the board of trustees of a fund to which this Act applies.

(4-a) "Catastrophic injury" means irreparable physical bodily injury sustained by a member as a direct and immediate result of the member's engaging in an activity that:

(A) constitutes the performance of the member's duties as a firefighter or police officer;

(B) involves an extraordinary degree of risk of bodily injury or death;  
and

(C) does not result in death.

(4-b) "Class" means the trainee class of a fire fighter or police officer training academy of a municipality to which this Act applies from which a member graduated, as determined by the board.

(4-c) "Class graduation date" means the date the graduates of any class graduated, as determined by the board.

(5) "Code" means the United States Internal Revenue Code of 1986.

(6) "Department" means the fire department of a municipality to which this Act applies, the police department of a municipality to which this Act applies, or both the fire department and the police department of such a municipality.

(7) "Dependent child" means:

(A) a person who is less than 18 years of age and is a child of a deceased member or deceased retiree; or

(B) a person:

(i) who is at least 18 years of age;

(ii) who is mentally or physically disabled to the extent that the person is not capable of being self-supporting; and

(iii) whose natural or adoptive parent is a deceased member or deceased retiree, provided that, for the year immediately preceding the death of the member or retiree, the deceased member or retiree claimed the person as a dependent on the member's or retiree's federal income tax return.

(8) "Dependent parent" means a person who is the natural parent of a deceased member or deceased retiree or who adopted a deceased member or deceased retiree before the deceased member or retiree's 18th birthday if, for the year immediately preceding the death of the member or retiree, the deceased member or retiree claimed the person as a dependent on the member's or retiree's federal income tax return.

(8-a) "Disability" means a regular disability under Section 5.03(a) of this Act or a catastrophic injury disability under Section 5.03(a-1) of this Act.

(9) "Fire fighter" means an employee of the fire department who is classified as a fire fighter by the personnel department of the municipality.

(10) "Fund" means the fire fighters and police officers pension fund of a municipality to which this Act applies.

(11) "Member" means a fire fighter or police officer who has become a member of the fund as provided by Section 4.01(a) or 4.011 of this Act and has not retired, died, or forfeited the person's interest in the fund.

(11-a) "Member buyback contribution amount" means the amount of the first contribution by a member to the fund for a full pay period, multiplied by 26, divided by 12, and multiplied by 3.

(12) "Police officer" means an employee of the police department who is classified as a police officer by the personnel department of the municipality.

(12-a) "Probationary period" means the period beginning on the graduation date of a graduate of a class and ending on the date the graduate becomes a member.

(12-b) "Qualified funds" means pretax funds that are part of an eligible rollover distribution, as described in Section 402(f)(2) of the code, or funds that have been transferred to the fund in accordance with Section 403(b)(13) or Section 457(e)(17) of the code to purchase years or fractions of years of service.

(12-c) "Qualified mayoral designee" means an individual designated by the mayor of a municipality to which this Act applies who is a member or former member of the city council of, or an employee of, a municipality to which this Act applies.

(13) "Retiree" means a member who has terminated employment with the department with a right to a service retirement pension as provided by Section 5.01 of this Act or a disability retirement pension as provided by Section 5.03 of this Act.

(14) "Retirement" means the period that a retiree is entitled to receive service retirement benefits or disability retirement benefits.

(15) "Retirement annuity" means pension benefits payable to a retiree on an annual basis in accordance with this Act.

(16) "Surviving spouse" means a widow or a widower of a member or retiree who was married to the member or retiree at the time of the member's or retiree's death.

(17) "Total salary" means all salary of a member, except:

(A) overtime pay, field training officer's pay, bomb squad pay, SWAT team pay, K-9 pay, and hostage team pay; and

(B) pay for unused accrued vacation and sick leave, holiday pay, compensatory time pay, and bonus days leave, or any similar items of compensation that may be paid in the future.

(18) "Years of service" means a member's total years of service, including fractional years or full months of service, computed as provided by Section 5.01 of this Act.

### **SECTION 1.03. APPLICABILITY.**

This Act applies to paid fire and police departments of a municipality with a population between 1,140,000 and 1,180,000, according to the most recent federal census.

### **SECTION 1.04. STATUTORY TRUST.**

(a) The fund is a statutory trust and is not a subdivision of government.

(b) The board shall hold in trust the assets of the fund for the exclusive benefit of the members and retirees of the fund and their beneficiaries and for defraying reasonable administrative expenses of the fund.

(c) The fund may not be diverted, transferred, or used for any purpose inconsistent with this Act and with the instruments governing the fund.

(d) A public or private entity, agency, or authority may not alter or impair any contract made by the board or under the authority or direction of the board.

(e) The fund is independent of the control of a municipality to which this Act applies.

### **SECTION 1.05. EXEMPTIONS.**

(a) An amount payable from the fund is exempt from garnishment, assignment, attachment, judgments, other legal process, and inheritance or other taxes established by this state.

(b) Fund assets are exempt from attachment, execution, alienation, and forced sale. A judgment lien or abstract of judgment may not be filed or perfected against the fund on fund assets. A judgment lien or abstract of judgment filed against the fund on fund assets is void.

### **SECTION 1.06. OTHER PENSION SYSTEM ESTABLISHED BY STATE LAW.**

Notwithstanding any other law, if the employees of the fire or police department who have been members of the fund are included in another pension system established

by state law, the board shall act for any similar board created by that law with regard to the receipt and payment of amounts owed to the employees under this Act. Employees of a department who are members of the fund and are not included in the other pension system may not participate in any payment under this section.

**SECTION 1.07. CONSTRUCTION OF ACT.**

This Act does not provide any benefit that is not specifically provided by this Act.

**ARTICLE 2.  
ADMINISTRATIVE PROVISIONS**

**SECTION 2.01. BOARD OF TRUSTEES.**

(a) The fund is governed by a board of trustees consisting of the following nine members:

(1) the mayor of a municipality to which this Act applies or a qualified mayoral designee;

(2) two members of the governing body of a municipality to which this Act applies, appointed by that governing body;

(3) two active members who are fire fighters below the rank of fire chief, elected by secret ballot by a majority of the votes cast by the members of the fire department;

(4) two active members who are police officers below the rank of police chief, elected by secret ballot by a majority of the votes cast by the members of the police department;

(5) a retiree representative of the fire department, elected by secret ballot by a majority of the votes cast by the retirees of the fire department and the surviving spouses who are receiving benefits with respect to deceased members or retirees of the fire department; and

(6) a retiree representative of the police department, elected by secret ballot by a majority of the votes cast by the retirees of the police department and the surviving spouses who are receiving benefits with respect to deceased members or retirees of the police department.

(b) The board, through its secretary, shall administer the required elections of the active member and retiree representatives by mailing ballots to all eligible members, retirees, or beneficiaries. Only retirees and surviving spouses who are currently receiving benefits from the fund are eligible to vote for the retiree representatives. If no candidate receives a majority of the votes cast for any trustee position, the board shall hold a run-off election in which the only candidates are the candidates who received the highest and second-highest number of votes cast. If a candidate for trustee is unopposed in an election, the board shall certify the candidate as elected to the board on the executive director's certification that the candidate is eligible and is unopposed for election.

**SECTION 2.02. TERMS OF TRUSTEES.**

(a) The mayor of a municipality to which this Act applies, or a qualified mayoral designee, serves on the board for the term of the mayor's office except that, if

the mayor appoints a mayoral designee, the mayor may replace or remove that mayoral designee at the mayor's discretion. An individual designated by the mayor to serve on the board under this subsection may only serve on the board while the individual is a qualified mayoral designee.

(b) The two members of the municipal governing body serve on the board for the term of the office to which they are elected.

(c) The two active fire fighters below the rank of fire chief serve on the board for staggered four-year terms, with one member's term expiring every two years.

(d) The two active police officers below the rank of police chief serve on the board for staggered four-year terms, with one member's term expiring every two years.

(e) The retiree representatives serve on the board for staggered four-year terms, with one member's term expiring every two years.

### **SECTION 2.03. RESIGNATION OR REMOVAL OF TRUSTEES.**

(a) The members of the board who are fire fighters or police officers may resign or may be removed by a vote of the membership of their respective departments.

(b) The members of the board who are retiree representatives may resign or may be removed by a vote of the group eligible to elect them.

(c) A petition for removal under this section must be filed with the board within 45 days after the date the first signature on the petition is obtained. A signature is invalid if it is not dated.

(d) A removal election under this section must be held and completed within 90 days after the date the board certifies that a proper petition for a removal election has been signed by at least 20 percent of the membership from which the trustee was elected. A trustee's term of service ends on the entry of an order by the board declaring that a majority of the votes cast in a removal election under this section favor removal.

(e) On the date the board enters an order under Subsection (d) of this section, the board shall call a special election to fill the vacancy for the unexpired term of the trustee who was removed. The trustee who was removed is not eligible to run in the special election but is eligible to run in all subsequent board elections.

### **SECTION 2.04. OFFICERS.**

The board shall elect from the trustees a presiding officer, an assistant presiding officer, and a secretary.

### **SECTION 2.05. EMPLOYEES.**

The board may employ an executive director and staff as needed to administer the fund.

### **SECTION 2.06. MEETINGS; QUORUM.**

(a) The board shall hold regular monthly meetings and special meetings at the call of the presiding officer or on written demand by a majority of the members of the board.

(b) A quorum of the board is five members. When a quorum is present, action of the board that requires a vote may be taken by a majority of the members present. Any action taken by less than a quorum is not binding on the board.

**SECTION 2.07. COMMITTEES OF BOARD.**

- (a) The presiding officer of the board may appoint committees that report to the board.
- (b) Only members of the board may be appointed to committees under this section.
- (c) Committees shall be composed of three or four members of the board, except as otherwise specifically provided by the board.
- (d) Only members of committees may vote as committee members.
- (e) The board may direct staff and advisors to assist the committees.
- (f) Members of committees serve at the pleasure of the board.
- (g) Permanent or standing committees may be appointed.

**ARTICLE 3.  
GENERAL POWERS AND DUTIES OF BOARD**

**SECTION 3.01. GENERAL POWERS AND DUTIES OF BOARD.**

- (a) The board has complete authority and power to:
  - (1) administer the fund for the exclusive benefit of all members, retirees, and beneficiaries;
  - (2) order payments from the fund as required by this Act;
  - (3) control the fund independently;
  - (4) conduct all litigation on behalf of the fund; and
  - (5) purchase with fund assets from one or more insurers licensed to do business in this state one or more insurance policies that provide for reimbursement of the fund and any trustee, officer, or employee of the board for liability imposed or damages because of an alleged act, error, or omission committed in the trustee's, officer's, or employee's capacity as a fiduciary, officer or employee of the fund and for costs and expenses incurred as a trustee, officer, or employee in defense of a claim for an alleged act, error, or omission, as long as the insurance policy does not provide for reimbursement of a trustee, officer, or employee for liability imposed or expenses incurred because of the trustee's, officer's, or employee's personal dishonesty, fraud, lack of good faith, or intentional failure to act prudently.
- (b) If the insurance coverage described by Subsection (a)(5) of this section is insufficient or is not in effect, the board may indemnify a person for liability, damages, and reasonable legal expenses that result from an alleged act, error, or omission occurring in the person's capacity as a trustee, officer, or employee of the fund without regard to the time of the occurrence of the allegation or whether the person continues to serve in that capacity. The board may not indemnify an individual because of the individual's dishonesty, fraudulent act, lack of good faith, or intentional failure to act prudently.
- (c) Indemnification under Subsection (b) of this section shall be determined by a majority vote of trustees who are not the subject of the indemnification. The board may adopt a policy for the presentation, approval, and payment of indemnification claims covered under Subsection (b) of this section.

(d) The board shall adopt rules necessary for the board's effective operation, including rules relating to:

- (1) the disbursement of the fund's assets;
- (2) the designation of beneficiaries of the fund; and
- (3) the name of the board and the fund.

(e) The board shall report annually to the governing body of the municipality regarding the condition of the fund and the receipts and disbursements of the fund.

(f) Attendance by any number of the trustees at a conference or gathering to research prospective investments or review current ones, to attend professional training, or otherwise attend to their fiduciary responsibilities, during which no formal discussion of public business takes place and no formal action is taken, is not a deliberation or meeting within the meaning of Chapter 551, Government Code, and is not required to be open to the public.

(g) A trustee of the fund is immune from liability for an action or omission made by the trustee in the performance of the trustee's official duties for the fund that is made in good faith.

(h) Records that are in the custody of the board concerning a member, former member, retiree, deceased retiree, beneficiary, or alternate payee are not public information under Chapter 552, Government Code, and may not be disclosed in a form identifiable to a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, or conservator, or another person whom the executive director determines from written documentation to be acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual, if the executive director determines that the information is relevant to the spouse's or former spouse's interest in a member's accounts or benefits or other amounts payable by the pension system;

(C) a government official or employee seeking the information in order to perform the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed under a subpoena and the executive director of the fund or the executive director's designee determines that the individual will have a reasonable opportunity to contest the subpoena.

(i) Subsection (h) of this section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member, deceased retiree, beneficiary, or alternate payee of the fund.

(j) A determination and disclosure under Subsection (h) of this section does not require notice to the individual member, retiree, beneficiary, or alternate payee.

### **SECTION 3.02. APPLICATIONS; HEARINGS.**

(a) The board shall consider all cases for membership in the fund and for the retirement and benefits of the members of the fund and all applications for benefits by surviving spouses, dependent children, and dependent parents.

(b) The board shall give notice to persons asking for membership in the fund or for a benefit to appear before the board and offer sworn evidence.

(c) Any contributing member of the fund who is in good standing in the fire or police department may:

(1) appear in person or by attorney to contest the application for membership participation in the fund or for an annuity or benefit by any person claiming to be entitled to an annuity or benefit, either as a member, beneficiary, or alternate payee; and

(2) offer supporting testimony.

(d) The presiding officer of the board may issue process for witnesses, administer oaths to those witnesses, and examine any witness in any manner affecting retirement or a benefit under this Act. The process for witnesses may be served on any member of the fire or police department or any other person the board considers to be an appropriate person. On the failure of any witness to attend and testify, that person may be compelled to attend and testify as in any judicial proceeding.

(e) A person's failure to give truthful information to the board in an application or in testimony at a hearing may result in a referral for criminal investigation.

### **SECTION 3.03. ORDERS FOR DISBURSEMENTS OF BENEFITS.**

(a) The board shall issue orders for disbursements signed by the presiding officer or assistant presiding officer of the board and the secretary of the board to the appropriate persons. The order shall state the purposes for the payments. The board shall keep a record of those orders.

(b) Disbursements may not be made without a record vote of the board.

(c) Each member, retiree, beneficiary, and alternate payee shall provide bank depository information to the board so that the board can disburse benefits by electronic transfer.

(d) Except as provided by Section 802.1024, Government Code, the board may reduce the amount of a benefit to which a retiree, beneficiary, or alternate payee is otherwise entitled in order to reimburse the fund for an overpayment or incorrect payment of benefits to the retiree, beneficiary, or alternate payee.

(e) The board may pay for the cost of counseling for members of the fund regarding retirement matters.

## **ARTICLE 4. MEMBERSHIP AND CONTRIBUTIONS**

### **SECTION 4.01. MEMBERSHIP.**

(a) A person is eligible to become a member of the fund as a condition of continued employment after the person has received state certification as a fire fighter or police officer, completed all other requirements for membership in the fund, and:

(1) graduated from a fire fighter or police officer training academy of a municipality to which this Act applies and passed the municipality's fire fighter's or police officer's probationary exam; or

(2) otherwise satisfied the requirements for employment as a fire fighter or police officer in a municipality to which this Act applies.

(b) A person may not become eligible for disability retirement benefits unless the person has provided an authorization for release of medical information for any medical records dated on or after the date of initial application for employment or has agreed in writing to provide that authorization when requested by the board or, in the alternative if required by the board, has submitted to a physical examination by a physician selected by the board.

(c) [Repealed effective October 1, 2009]

(d) The drawing of compensation by an officer or employee in the fire or police department for service in that department does not of itself make that person a member of the fund.

(e) The regularity of an appointment as a fire fighter or police officer of a municipality to which this Act applies may not be presumed from the serving of the full probationary period, if any. The service of the probationary period by an officer or employee as a fire fighter or police officer of a municipality to which this Act applies does not constitute the creation of a position or office to which a proper appointment has been made for purposes of this Act.

**SECTION. 4.011. MEMBERSHIP OF FIRE CHIEF AND POLICE CHIEF.**

(a) Subject to Subsection (d) of this section, not later than the 30th day after the date a fire chief or a police chief of a municipality to which this Act applies assumes office, the fire chief or police chief may make an irrevocable election to not become a member of the fund.

(b) An election under this section must be made by delivering written notice of the election to the secretary of the board.

(c) A fire chief or police chief who does not make an election under this section becomes a member of the fund.

(d) A fire chief or police chief who was a member of the fund at any time during the two years preceding the date the fire chief or police chief assumes office may not make an election under this section.

**SECTION 4.02. FAMILY AND MEDICAL LEAVE.**

(a) If a member takes unpaid leave as provided by the Family and Medical Leave Act (29 U.S.C. Section 2601 et seq.), that member is entitled to make voluntary contributions for the leave period in the same amount as the member would have paid if the member had not taken the leave. Those payments must be made not later than the 30th day after the date the member returns from that leave. A computation of contributions under this section shall be made in the same manner as other computations under this Act. A municipality to which this Act applies shall match an amount equal to twice the amount of each payment a member makes to the fund under this subsection.

(b) If the member does not comply with Subsection (a) of this section, the member loses all credit toward the member's retirement annuity for the period the member was on leave.

**SECTION 4.03. UNIFORMED SERVICE.**

(a) A member of the fund who enters any uniformed service of the United States may not:

(1) be required to make the monthly payments into the fund provided by this Act as long as the member is engaged in active service with the uniformed service; or

(2) lose any seniority rights or retirement benefits provided by this Act by virtue of that service.

(b) Not later than the 90th day after the date of the member's reinstatement to an active status in the fire or police department, the member must file with the secretary of the board a written statement of intent to pay into the fund an amount equal to what the member would have paid if the member had remained on active status in the department during the period of the member's absence in the uniformed service.

(c) The member must make the payment described by Subsection (b) of this section in full within an amount of time after the member's return that is equal to three times the amount of time the member was absent, except that the maximum period for payment may not exceed five years.

(d) Except as provided by Subsection (f) of this section, if the member does not comply with Subsections (b) and (c) of this section, the member shall lose all credit toward the member's retirement annuity for the length of time the member was engaged in active service in any uniformed service.

(e) The amount of credit purchased under this section may not exceed the length of the active service in a uniformed service required to be credited by law.

(f) If a person who became a member before October 1, 1997, does not make the payment required under Subsection (c) of this section within the required amount of time and the member would otherwise be eligible for credit under federal law, the member may receive credit for the uniformed service if the member also pays interest, compounded annually, on the then current rate of a member's contribution from the date the payment was required to the date the payment was made. The board shall set the rate of interest.

(g) [Repealed effective October 1, 2003]

(h) A municipality to which this Act applies shall double-match payments made to the fund under this section.

**SECTION 4.04. MEMBER CONTRIBUTIONS.**

(a) There shall be deducted from the total salary of each fire fighter and police officer in the employment of a municipality to which this Act applies a percentage of the member's total salary according to the following schedule:

(1) 11.16 percent for full pay periods after September 30, 1993, but before October 1, 1994;

(2) 11.32 percent for full pay periods after September 30, 1994, but before October 1, 1995;

(3) 11.50 percent for full pay periods after September 30, 1995, but before October 1, 1996;

(4) 11.66 percent for full pay periods after September 30, 1996, but before October 1, 1997;

(5) 11.82 percent for full pay periods after September 30, 1997, but before October 1, 1998;

(6) 12.00 percent for full pay periods after September 30, 1998, but before October 1, 1999;

(7) 12.16 percent for full pay periods after September 30, 1999, but before October 1, 2000; and

(8) 12.32 percent for full pay periods after September 30, 2000.

(b) The municipality has always picked up and shall continue to pick up the member contributions that are required by Subsection (a) of this section.

(c) Contributions picked up by the municipality shall be treated as employer contributions for the purpose of determining tax treatment of the amounts under the code. Those contributions are not included in the gross income of the employee until the time they are distributed or made available to the employee.

#### **SECTION 4.05. MUNICIPAL CONTRIBUTIONS.**

(a) Except as provided by Subsection (a-1) of this section, a municipality to which this Act applies shall pay into the fund an amount equal to double the sum total of all member contributions made in accordance with Section 4.04 of this Act.

(a-1) For a member who participates in the fund for the first time after September 30, 2003, and before October 1, 2005, a municipality is not required to pay an amount under Subsection (a) of this section into the fund for the member before the 61st day after the date the member becomes a participant in the fund.

(b) The payments into the fund by the municipality, both as to deductions and double-matching amounts, shall be made on the same day the contributions are deducted from the members' total salary.

(c) Any donations made to the fund and all amounts received from any source for the fund shall be deposited in the fund at the earliest opportunity.

(d) The municipality's double-matching amount under this section is in place of all other payments previously required by law to be made by the municipality.

(e) The municipal contribution and retirement annuities are a part of the compensation for services rendered to the municipality. This Act is of the essence of the contract of employment and appointment of the fire fighters and police officers of a municipality to which this Act applies.

#### **SECTION 4.06. DEFICIENCY PAYMENT BY MUNICIPALITY.**

A municipality to which this Act applies shall pay the deficiency, if any, between the amount available to pay all retirement annuities and other benefits owed under this Act and the amount required by this Act to pay those benefits.

#### **SECTION 4.07. REFUND OF CONTRIBUTIONS.**

(a) [Repealed effective October 1, 2007]

(b) A member of the fund who terminates employment before the member's right to benefits under the fund has vested is entitled to a refund of the member's contributions that were picked up by the municipality. That refund shall be paid without interest. A refund under this section is not available to a member who terminates employment to receive a disability pension or to a survivor beneficiary under this Act.

Except as provided by Section 4.08 of this Act, a person's acceptance of a refund under this subsection precludes the person from any other right or benefit under this Act.

**SECTION 4.08. PURCHASE OF SERVICE CREDIT PREVIOUSLY REFUNDED**

(a) A member who received a refund under Section 4.07 of this Act of contributions made for a prior period of employment may reestablish service credit for that prior period of employment by paying to the fund a lump sum equal to the amount of the refund the member received under Section 4.07 of this Act, plus interest on the amount at the actuarial assumed rate of return, as established by the board, from the date the member received the refund to the date the member makes the lump-sum payment.

(b) A member must make the lump-sum payment under this section within a period of days after the date the member is reemployed that is equal to three times the number of days of the period beginning on the date the member terminated the member's prior employment and ending on the date the member is reemployed, provided that the period for making the lump-sum payment may not exceed five years.

(c) The member must file with the secretary of the board a written statement of intent to make the lump-sum payment under this section not later than the 90<sup>th</sup> day after the date the member is reemployed, except that a member who is reemployed before October 1, 2003, must file the statement on or before December 31, 2003.

**ARTICLE 5.  
MEMBER BENEFITS**

**SECTION 5.01. RETIREMENT BENEFITS.**

(a) If a member of the fund has contributed a portion of that member's salary as provided by this Act and has contributed and served for 20 years or more in the fire or police department, the board shall, on the application of the member for a retirement annuity, authorize a retirement annuity to the member.

(b) The board shall compute the retirement annuity of a member who retires after September 30, 1991, but before October 1, 1995, on the basis of the average of the member's total salary for the highest three years of the last five years, computed from the date of retirement, of the member's pay at the rate of two percent for each of the first 20 years served, plus 3 ½ percent for each of the next 10 years served, plus one percent for each of the next five years served, with fractional years prorated based on full months served as a contributing member, but the annuity may not exceed, as of the date of retirement, 80 percent of the average so determined.

(c) The board shall compute the retirement annuity of a member who retires after September 30, 1995, but before October 1, 1997, on the basis of the average of the member's total salary for the highest three years of the last five years computed from the date of retirement, of the member's pay at the rate of two percent for each of the first 20 years served, plus four percent for each of the next five years served, plus 3 ½ percent for each of the next five years served, plus one percent for each of the next five years served, with fractional years prorated based on full months served as a contributing member. In making the computation for a year, the year is considered to begin on the first day a

contribution is made. An annuity under this subsection may not exceed, as of the date of retirement, 82.5 percent of the average determined under this subsection.

(d) The board shall compute the retirement annuity of a member who retires after September 30, 1997, but before October 1, 1999, at the rate of two percent of the member's average total salary for each of the first 20 years of service, plus four percent of average total salary for each of the next 10 years of service, plus one percent of average total salary for each of the next five years of service, with fractional years of service prorated based on full months served as a contributing member. In making the computation for a year, the year is considered to begin on the first day a contribution is made. A retirement annuity under this subsection may not exceed, as of the date of retirement, 85 percent of the member's average total salary.

(e) The board shall compute the retirement annuity of a member who retires after September 30, 1999, but before October 1, 2001, at the rate of 2-1/8 percent of the member's average total salary for each of the first 20 years of service, plus four percent of the member's average total salary for each of the next 10 years of service, plus one percent of the member's average total salary for each of the next five years of service, with fractional years of service prorated based on full months served as a contributing member. In making the computation for a year, the year is considered to begin on the first day a contribution is made. A retirement annuity under this subsection may not exceed, as of the date of retirement, 87-1/2 percent of the member's average total salary.

(f) The board shall compute the retirement annuity of a member who retires after September 30, 2001, but before October 1, 2007, at the rate of 2-1/4 percent of the member's average total salary for each of the first 20 years of service, plus 4-1/2 percent of the member's average total salary for each of the next seven years of service, plus three percent of the member's average total salary for each of the next three years of service, plus one-half percent of the member's average total salary for each of the next four years of service, with fractional years of service prorated based on full months served as a contributing member. In making the computation for a year, the year is considered to begin on the first day a contribution is made. A retirement annuity under this subsection may not exceed, as of the date of retirement, 87-1/2 percent of the member's average total salary.

(f-1) The board shall compute the retirement annuity of a member who retires after September 30, 2007, at the rate of 2-1/4 percent of the member's average total salary for each of the first 20 years of service, plus five percent of the member's average total salary for each of the next seven years of service, plus two percent of the member's average total salary for each of the next three years of service, plus one-half percent of the member's average total salary for each of the next three years of service, with fractional years of service prorated based on full months served as a contributing member. In making the computation for a year, the year is considered to begin on the first day a contribution is made. A retirement annuity under this subsection may not exceed, as of the date of retirement, 87-1/2 percent of the member's average total salary.

(g) A member may not receive an award from the fund for service retirement until the member has at least 20 years of service in the fire or police department and has also contributed the required amount of money for at least 20 years. In determining the number of years of service in a department, the member shall be given full credit for the period the member was an active member plus the time the member was actively engaged

in service with any uniformed service in accordance with Section 4.03 of this Act and for absences taken under the Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), in accordance with Section 4.02 of this Act. Disciplinary suspensions of 15 days or less may not be subtracted from a member's service credit under this Act if the member has paid into the fund, within 30 days after the later of the termination date of each suspension or the exhaustion of any appeal with respect to the suspension, a sum of money equal to the amount of money that would have been deducted from that person's salary during that period of suspension if it had not been for that suspension. A municipality to which this Act applies shall double-match a payment made under this subsection. Members of the fund at the time of their retirement shall also receive service credit for all unused sick leave accumulated by them under Chapter 143, Local Government Code, but only to the extent the unused sick leave exceeds 90 days. Service credit for unused sick leave shall be prorated based on each full month of sick leave. A member's service credit under this section includes any service credit purchased in accordance with Subsections (k)-(m) of this section.

(h) All monthly pensions being paid by the fund to retirees who retired before October 1, 1989, are increased, effective with the first monthly payment due on or after October 1, 1999. The amount of the increase depends on the fiscal year ending September 30 in which the retiree retired and is a percentage of the pension payment that would have been payable on October 1, 1999, except for this increase. The amount of the percentage increase is:

<u>Municipality Fiscal Year of Retirement</u>	<u>Percentage Increase</u>
1988	1.0%
1987	2.0%
1986	3.0%
1985	4.0%
1984	5.0%
1983	6.0%
1982	7.0%
1981	8.0%
1980	9.0%
1979 or earlier	10.0%

(i) Beginning with the first monthly benefit payable by the fund after October 1, 2007:

(1) the monthly benefit payable by the fund to a retiree or a beneficiary of a deceased retiree or active member as a result of a service retirement, disability retirement, or death of an active member that occurred before October 1, 1989, increases by \$200; and

(2) a monthly benefit that is divided and payable to more than one beneficiary in accordance with Section 6.02 of this Act increases by a total amount of \$200.

(j) Beginning with the first monthly benefit payable by the fund after October 1, 2007:

(1) a monthly benefit payable by the fund to a retiree or a beneficiary of a deceased retiree or active member that is less than \$1,850 per month, after taking into account the increase provided for in Subsection (i) of this section, increases to \$1,850 per month; and

(2) a monthly benefit that is divided and payable to more than one beneficiary in accordance with Section 6.02 of this Act increases to a total amount of \$1,850.

(k) A member employed for a probationary period by a municipality to which this Act applies may elect to purchase one month of service credit for each full month in the member's probationary period, up to a maximum of 10 months. For each month of service credit the member elects to purchase, the member shall pay to the fund, on or before September 30, 2010, an amount equal to the sum of:

(1) the member buyback contribution amount for the member; and

(2) interest on the amount determined under Subdivision (1) of this subsection at the rate of eight percent per annum, compounded annually, calculated for the period beginning on the first day after the class graduation date for the member's class and ending on the earlier of December 31, 2009, or the date the fund receives the payment required under this subsection.

(l) A member may not elect to purchase a partial month of service credit under Subsection (k) of this section. A member is not required to elect to purchase more than one month of service credit under Subsection (k) of this section. A member may make the payment required under Subsection (k) of this section only with qualified funds. A member must make an election under Subsection (k) of this section on or before December 31, 2009, in accordance with policies and procedures adopted by the board.

(m) An election under Subsection (k) of this section is void unless the member makes the full required payment before the earlier of the date of the member's retirement or the date of the member's death. If a member makes only partial payment before the earlier of the date of the member's retirement or the date of the member's death, the fund shall refund all payments received, without interest, to the member, if the member is alive, or to the member's estate, if the member is dead. The fund shall refund payment under this subsection not later than the 60th day after the date of the member's retirement or the date of the member's death, as applicable.

#### **SECTION 5.015. BACKWARD DEFERRED RETIREMENT OPTION PLAN (BACK DROP).**

(a) At the time a member applies for retirement benefits under Section 5.01 of this Act, the member may elect a Backward Deferred Retirement Option Plan (Back DROP) with a lump-sum payment and a reduced annuity benefit as provided by this section.

(b) The Back DROP election:

(1) results in a lump-sum payment for a number of full months of service elected by the member that does not exceed the lesser of the number of months of service credit the member has in excess of 20 years or 60 months;

(2) is available only to a member who takes a service retirement; and

(3) must be made at the time of application for retirement.

(c) To be eligible to make a Back DROP election under this section, a member of the fund must have at least 20 years and 1 month of service in the fire or police department.

(d) The amount of a lump-sum payment to which a member making a Back DROP election is entitled shall be computed in the manner provided by this subsection and Subsection (d-1) of this section. The member's retirement annuity shall be computed in the manner provided by Section 5.01 of this Act, except that the amount of service credit and average total salary used in making that computation shall be determined in accordance with this subsection. For purposes of this subsection, the member's average total salary shall be computed based on the member's Back Drop retirement date, which is the member's actual retirement date less the amount of time the member elects under Subsection (b)(1) of this section. For purposes of this subsection, the member's service credit shall be the member's service credit determined in accordance with Section 5.01(g) of this Act less the amount of time for:

(1) any service credit in excess of 34 years of service, other than service credit for sick leave unused on the date of actual retirement;

(2) any service credit given for sick leave unused on the date of actual retirement; and

(3) any service credit in excess of 20 years but not in excess of the amount permitted under Subsection (b) (1) of this section that the member elects for computing the amount of the lump-sum payment.

(d-1) The member's retirement annuity as computed under Subsection (d) of this section shall be divided by 12 to compute the member's monthly pension to be used to compute the lump-sum payment. The member's monthly pension multiplied by the number of full months elected by the member under Subsection (b)(1) of this section is the amount of the lump-sum payment to which the member is entitled.

(e) For purposes of computing the monthly pension of a member making a Back DROP election, the member's retirement annuity shall be computed in the manner provided by Section 5.01 of this Act, except that:

(1) the amount of service credit used in making that computation shall be the member's service credit determined in accordance with Section 5.01(g) of this Act less:

(A) the amount of time the member elects under Subsection (b) (1) of this section; and

(B) any service credit in excess of 34 years of service excluding any service credit for sick leave unused on the date of actual retirement; and

(2) the member's average total salary shall be computed as if the member's retirement date were the member's actual retirement date less the amount of time the member elects under Subsection (b)(1) of this section.

(e-1) The annuity computed under Subsection (e) of this section may not exceed the applicable limitations provided by Section 5.01 of this Act. The member's retirement annuity shall be divided by 12 to compute the member's monthly pension.

(f) A member may defer receiving the lump-sum payment under this section for a period of not longer than 12 months after the member's retirement date. Interest may not be paid on the deferred amount at the time of distribution.

**SECTION 5.02. RETIREMENT BENEFITS AFTER CESSATION OF MEMBERSHIP.**

(a) A person who has qualified for a retirement annuity under this Act but who has subsequently ceased to be a member of the fund or a properly enrolled member of the fire or police department, by whatever means or for whatever reason, is entitled to a retirement annuity from the fund that accrued to that person before the time that person ceased to be a member of the fund or a properly enrolled member of the fire or police department if the person or the person's beneficiary, in the event of the person's death, files an application for the retirement annuity with the board.

(b) A retirement annuity under Subsection (a) of this section begins the first full calendar month after the month in which the application is filed with the board.

(c) The amount of the retirement annuity under Subsection (a) of this section is the lesser of:

(1) the amount established as of the date the person ceased to be a member of the fund or a properly enrolled member of the fire or police department; or

(2) the amount established as of the date the person, or the person's beneficiary filed an application under this section.

**SECTION 5.03. ELIGIBILITY FOR DISABILITY RETIREMENT.**

(a) An active member of the fund who is not eligible to receive a catastrophic injury disability annuity under Subsection (a-1) of this section is eligible to retire and receive a regular disability retirement annuity if the member:

(1) makes a written application for regular disability retirement with the board;

(2) is permanently disabled through injury or disease so as to be unable to perform the duties of any available position in the department and has been off active duty for a continuous period of not less than 30 days before the date of the application for disability retirement;

(3) has had all member contributions required by this Act made on the member's behalf;

(4) is not on indefinite suspension as described in Subsection (d) of this section; and

(5) has authorized the release to the board of all medical records dated on or after the date of initial application for employment with the department.

(a-1) An active member of the fund is eligible to retire and receive a catastrophic injury disability retirement annuity if the member:

(1) makes a written application for catastrophic injury disability retirement with the board;

(2) is permanently so disabled as a result of a catastrophic injury as to:  
(A) be unable to secure any type of third-party employment, or engage in any self-employment, other than sporadic third-party or self-employment; and

(B) have, as a result of the lack of third-party employment or self-employment, an annual income less than the poverty level for one person in the 48 contiguous states of the United States as provided under the poverty guidelines published from time to time by the United States Department of Health and Human Services, or similar guidelines selected by the board;

(3) has had all member contributions required by this Act made on the member's behalf;

(4) is not on indefinite suspension as described in Subsection (d) of this section; and

(5) has authorized the release to the board of all medical records dated on or after the date of initial application for employment with the department.

(a-2) The following diseases, disorders, or injuries are not catastrophic injuries:

(1) heart disease or lung disease contracted as a result of repeated exposure to occupational environmental conditions over a period of months or years;

(2) an anxiety disorder, including post-traumatic stress disorder; or

(3) a soft-tissue back, neck, or spine injury, including a sprain, strain, subluxation, or repetitive stress injury, that does not result in paralysis, as determined by a physician authorized or appointed by the board.

(b) A member of the fund who has a disability resulting from injury or disease incurred before the member became a fire fighter or police officer is not entitled to a disability retirement annuity based on that disability.

(c) Except as provided by Subsection (d) of this section, a member of the fund who is on suspension and who becomes disabled as a result of an injury sustained or disease contracted while the member is on suspension is eligible for a disability retirement annuity under Subsection (a) or (a-1) of this section, as applicable, if the suspended member makes up each deducted contribution lost by reason of the suspension not later than the 30th day after the later of the termination date of the suspension or the exhaustion of any appeal with respect to the suspension. A municipality to which this Act applies shall double-match all contributions made by a member under this subsection.

(d) A member of the fund who is on indefinite suspension is not eligible for a disability retirement annuity until the final determination of the suspension and all appeals of that determination are exhausted. A member of the fund who is on indefinite suspension is not entitled to a disability retirement annuity if the member is finally discharged. A member of the fund who is on indefinite suspension but who is restored to duty or who is given a suspension for a specific period is eligible for a disability retirement annuity as provided by Subsection (a) of this section.

(e) A member of the fund who applies for disability retirement under this section is subject to medical examination as determined by the board.

(f) This section does not affect any rights under Section 5.02 of this Act.

(g) A disability retiree who becomes disabled before October 1, 2007, and who is otherwise qualified to receive a catastrophic injury disability retirement annuity under Subsection (a-1) of this section is eligible to receive an annuity under that subsection, subject to Section 5.04(a-2) of this Act.

#### **SECTION 5.04. DISABILITY RETIREMENT BENEFITS.**

(a) A member who is eligible to retire and receive a disability retirement annuity under Section 5.03(a) of this Act is entitled to receive an annuity from the fund equal to:

(1) 50 percent of the member's average total salary, if the member has served three years or more before the date of retirement;

(2) 50 percent of the member's average monthly salary as of the date of retirement multiplied by 12, if the member has served at least two months and less than three years before the date of retirement; or

(3) 50 percent of the member's average daily salary as of the date of retirement multiplied by 360, if the member has served less than two months before the date of retirement.

(a-1) Subject to Subsection (a-2) of this section a member who is eligible to retire and receive a catastrophic injury disability retirement annuity under Section 5.03(a-1) of this Act is entitled to receive an annuity from the fund equal to:

(1) 87.5 percent of the member's average total salary, if the member has served three years or more before the date of retirement;

(2) 87.5 percent of the member's average monthly salary as of the date of retirement multiplied by 12, if the member has served at least two months and less than three years before the date of retirement; or

(3) 87.5 percent of the member's average daily salary as of the date of retirement multiplied by 360, if the member has served less than two months before the date of retirement.

(a-2) An annuity awarded by the board under Subsection (a-1) of this section to a member who was previously awarded an annuity under Subsection (a) of this section shall be increased to equal the amount the annuity awarded under Subsection (a) of this section would have been if the annuity had been awarded under Subsection (a-1) of this section, taking into account the cost of living adjustment increases provided for in Section 5.09 of this Act. This subsection does not entitle the member to any additional payment for the period before the effective date of the award under Subsection (a-1) of this section.

(b) In making computations under this section, all fractional years must be prorated based on full months served in the department as a contributing member of the fund.

(c) [Repealed effective October 1, 2007]

#### **SECTION 5.05. MEDICAL REEXAMINATION AND REDUCTION OF DISABILITY RETIREMENT BENEFITS.**

(a) The board may cause a disability retiree to undergo a medical examination or examinations by any reputable physician or physicians selected by the board.

(a-1) A disability retiree who is awarded a catastrophic injury disability annuity under Section 5.03(a-1) of this Act shall undergo a medical examination by any reputable physician or physicians selected by the board:

(1) not later than 60 months after the date of the award of the annuity by the board; and

(2) thereafter, not later than 60 months following the last required medical examination of the disability retiree under this subsection.

(a-2) The board may require one or more medical examinations under Subsection (a) of this section in addition to those required under Subsection (a-1) of this section.

(a-3) Subject to Subsection (c) of this section, based on an examination under Subsections (a), (a-1), or (a-2) of this section, the board shall determine whether the

disability retirement annuity shall be continued, decreased, restored to the original amount if it had been decreased, or discontinued.

(b) For those retired because of disability before August 30, 1971, the board may change the disability retirement annuity provided by this Act, in accordance with any change in the degree of disability, except that the percentage used to compute the annuity may not, except in the case of discontinuance, be reduced to less than 2.25 percent of the base pay of a private each month, for each year that the retiree has served and contributed a portion of salary as provided by this Act, based on the greater of:

(1) the rate of pay at the time of the original granting of the disability retirement annuity; or

(2) a minimum base pay of \$200 each month.

(c) For those retired because of disability on or after August 30, 1971, the disability retirement annuity may not be reduced to an amount that is less than the product of:

(1) 2.25 percent multiplied by the number of years that the retiree served in the department and contributed a portion of salary as a member of the fund multiplied by the retiree's average total salary, if the retiree served three years or more before the date of retirement;

(2) 2.25 percent multiplied by the number of years that the retiree served in the department and contributed a portion of salary as a member of the fund multiplied by the retiree's average monthly salary as of the date of retirement multiplied by 12, if the retiree served at least two months and less than three years before the date of retirement; or

(3) 2.25 percent multiplied by the number of years that the retiree served in the department and contributed a portion of salary as a member of the fund multiplied by the retiree's average daily salary as of the date of retirement multiplied by 360, if the member has served less than two months before the date of retirement.

(c-1) In making the computation under Subsection (c) of this section, all fractional years shall be prorated based on full months served in the department as a contributing member of the fund before the date of retirement.

(d) If a disability retiree, after notice, fails to undergo a medical examination as provided by this section, the board may reduce or entirely discontinue the retiree's disability annuity payments.

#### **SECTION 5.06. REMOVAL OF DISABILITY AND WAIVER ON REINSTATEMENT.**

(a) If a disability retiree applies for reinstatement to the department from which that person retired, the disability retiree, in addition to complying with any applicable civil service laws, shall file a written application with the board for a discontinuance of that person's disability retirement annuity, subject to medical examination, indicating that the person has recovered from the disability for which that person has been receiving disability retirement annuity payments and certifying to the board that the chief of the department from which that person was retired approves that person's reinstatement.

(b) The applicant must execute a waiver on a form prescribed by the board in which the applicant waives a second disability retirement annuity resulting from the same

disability that was the basis of the first disability at a higher rate than the applicant was receiving at the time of the reinstatement for a period of three years after reinstatement. After three years of reinstated service, any subsequent disability retirement annuity is computed as any other disability retirement annuity.

(c) If the applicant is required to undergo retraining and is compensated during a period before being officially reinstated, the applicant's monthly disability retirement annuity shall be reduced by the amount of any monthly departmental payroll benefit, to the extent that the latter is greater.

(d) The board may approve the discontinuance of a disability retirement annuity as provided by this Act.

**SECTION 5.07. OUTSIDE INCOME PENSION REDUCTION.**

(a) The board shall require each disability retiree retiring after August 29, 1979, to provide the board annually not later than May 1 of each year with a true and complete copy of the retiree's income tax return for the previous year, except for a retiree who is 65 years of age or older as of December 31 of the previous year.

(b) If the retiree received income from other employment, including self-employment, during the preceding year, the board may reduce the retiree's disability retirement annuity by the amount of \$1 for each month for each \$2 of income earned by the retiree from the other employment during each month of the previous year, except that the disability retirement annuity may not be decreased below the amount determined under Section 5.05(c) of this Act.

**SECTION 5.08. REASONABLE ACCOMMODATION.**

(a) A disability retirement annuity may not be granted or continued if the chief of the member's department will provide the member employment within the department commensurate with that person's physical and mental capabilities.

(b) A determination under this section is solely within the discretion of the department chief and must be reasonably exercised.

**SECTION 5.09. COST-OF-LIVING INCREASES.**

(a) At or before its regular meeting in the month of March, the board annually shall review the Consumer's Price Index for All Urban Consumers (CPI-U), U. S. City Average or the nearest equivalent published by the United States Bureau of Labor Statistics for the preceding calendar year. If that index shows an increase during the preceding calendar year in the cost of living as compared with that index at the close of the previous year, the board shall order an increase of all service, disability, and death benefit retirement annuities by a percentage that varies by the date of the member's service or disability retirement, or, in the case of a member who died before retirement, the date on which the member died. If the member's service retirement, disability retirement, or death before retirement occurred before August 30, 1971, the annuity shall be increased by a percentage equal to the percentage increase in the cost of living index. If the member's service retirement, disability retirement, or death before retirement occurred on or after August 30, 1971, but before October 1, 1999, the annuity shall be increased as follows: if the percentage increase in the cost of living index is eight percent or less, the annuity shall be increased by a percentage equal to the percentage increase,

and if the percentage increase in the cost of living index is more than eight percent, the annuity shall be increased by eight percent plus a percentage equal to 75 percent of the percentage increase that is more than eight percent. If the member's service retirement, disability retirement, or death before retirement occurred on or after October 1, 1999, the annuity shall be increased by a percentage equal to 75 percent of the percentage increase in the cost of living index. A percentage increase in annuities shall be rounded to the nearest one-tenth percentage point for a cost of living increase.

(a-1) The cost of living increases described by this section do not apply to an annuity payable under Section 6.02(g-3) of this Act until the annuity becomes effective.

(b) The annuities to which this section applies shall be computed as of the month of January before that March board meeting and shall continue in effect for at least one full year until there has been an additional increase to that cost-of-living index and the board enters another order as provided by this section.

(c) The cost-of-living increase paid to any retiree or beneficiary during the first full year after the effective date of the service retirement, disability retirement, or death shall be prorated on the basis of full months from the date of the member's service retirement, disability retirement, or death.

#### **SECTION 5.10. COORDINATION WITH FEDERAL LAW.**

(a) A member or beneficiary of a member of the fund may not accrue a service retirement annuity, disability retirement annuity, death benefit, whether death occurs in the line of duty or otherwise, or any other benefit under this Act in excess of the benefit limits applicable to the fund under Section 415 of the code. The board shall reduce the amount of any benefit that exceeds those limits by the amount of the excess. If the total benefits under this fund and the benefits and contributions to which any member is entitled under any other qualified defined benefit plan maintained by the municipality that employs the member would otherwise exceed the applicable limits under Section 415 of the code, the benefits the member would otherwise receive from the fund shall be reduced to the extent necessary to enable the benefits to comply with Section 415 of the code.

(b) Any member or beneficiary who is entitled to receive any distribution that is an eligible rollover distribution as defined by Section 402(c)(4) of the code is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or beneficiary's choice on providing direction to the fund regarding that transfer in accordance with procedures established by the board.

(c) The total salary taken into account for any purpose for any member of the fund may not exceed \$200,000 per year for an eligible participant or \$150,000 per year for an ineligible participant. These dollar limits shall be periodically adjusted in accordance with guidelines provided by the United States secretary of the treasury. For purposes of this subsection, an eligible participant is any person who first became a member before 1996, and an ineligible participant is any member who is not an eligible participant.

(d) Accrued benefits under this Act become 100 percent vested for a member on:

- (1) the date the member has completed 20 years of service;

(2) the earlier termination or partial termination of the pension plan created by this Act, if it affects the member; or

(3) the complete discontinuance of contributions by the municipality to the fund.

(e) Amounts representing forfeited nonvested benefits of terminated members may not be used to increase benefits payable from the fund but may be used to reduce contributions for future plan years.

(f) Distribution of benefits must begin not later than April 1 of the year following the calendar year during which the member becomes 70-1/2 years of age and must otherwise conform to Section 401(a)(9) of the code.

(g) If the amount of any benefit is to be determined on the basis of actuarial assumptions that are not otherwise specifically set forth for that purpose in this Act, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the fund's actuary and approved by the board. The actuarial assumptions being used at any particular time shall be attached as an addendum to a copy of this Act and treated for all purposes as a part of this Act. The actuarial assumptions may be changed by the fund's actuary at any time if approved by the board, but a change in actuarial assumptions may not result in any decrease in benefits accrued as of the effective date of the change.

(h) This section applies to any benefit regardless of when accrued.

(i) The board may adopt rules to administer this section. A rule adopted by the board under this subsection is final and binding.

(j) To the extent permitted by law, the board may adjust the benefits of retired members and beneficiaries by increasing any retirement benefit that was reduced because of Section 415 of the code. If Section 415 of the code is amended to permit the payment of amounts previously precluded under Section 415 of the code, the board may adjust the benefits of retired members and beneficiaries, including the restoration of benefits previously denied. Benefits paid under this subsection are not considered as extra compensation earned after retirement but as the delayed payment of benefits earned before retirement.

(k) The board by rule shall implement this Act in a manner that preserves the tax qualification of the fund under the code and may revise any provision or program to the extent necessary to retain tax qualification.

(l) In this section, "qualified plan" has the meaning assigned by Section 8.02 of this Act.

#### **SECTION 5.11. 13TH CHECK FOR RETIREES.**

(a) In any fiscal year ending after 1996 for which the board determines that the average annual investment yield on the market value of fund investments for the preceding five fiscal years exceeded the annual investment yield projected by the actuary for that preceding five-fiscal-year period by at least one hundred basis points, the board may authorize the disbursement of a 13th pension check.

(b) The 13th pension check is paid to each retiree who is entitled to receive an annuity in the last month of the fiscal year preceding the fiscal year in which the check is disbursed and is in an amount equal to the amount of the annuity payment made in the last month of the preceding fiscal year, except the amount of any such check shall be

prorated for any retiree who has been receiving an annuity for less than one year so that the amount of the check is one-twelfth of the check that would have been paid to the retiree receiving an annuity for a full year times the number of full months an annuity has been paid.

(c) Authorization of a 13th check for any year is subject to the discretion of the board. Authorization for one year does not obligate the board to authorize a 13th check for any other year. The 13th check shall be paid as the board directs.

(d) In this section, "annual investment yield" means the yield on the fund's investment portfolio for a particular year, as a percentage of the portfolio, after reduction for costs of investing the portfolio, but without reduction for the fund's operating expenses.

#### **SECTION 5.12. 14TH CHECK FOR RETIREES.**

(a) In this section, "annual investment yield" has the meaning assigned by Section 5.11(d) of this Act.

(b) In a fiscal year ending after September 1, 2000, for which the board determines that the average annual investment yield on the market value of fund investments for the preceding five fiscal years exceeded the annual investment yield projected by the actuary for that five-fiscal-year period by at least 300 basis points, the board may authorize the disbursement of a 14th pension check.

(c) The 14th pension check is paid to each retiree who is entitled to receive an annuity in the last month of the fiscal year preceding the fiscal year in which the check is disbursed. Except as provided by Subsection (d) of this section, the check is in an amount equal to the amount of the annuity payment made in the last month of the preceding fiscal year.

(d) For a retiree who has received an annuity for less than one year, the amount of the 14th pension check is prorated so that the amount of the check is one-twelfth of the check that would have been paid to a retiree receiving an annuity for a full year times the number of full months an annuity has been paid.

(e) Authorization of a 14th check for any year is subject to the discretion of the board. Authorization for one year does not obligate the board to authorize a 14th check for any other year. The 14th check shall be paid as the board directs.

### **ARTICLE 6. BENEFICIARY'S BENEFITS**

#### **SECTION 6.01. MEMBER'S BENEFICIARY AND DEPENDENT CHILD'S RIGHTS.**

(a) A member of the fund has, in addition to all rights accruing from the person's membership, the same right to receive benefits as a beneficiary that a nonmember who is a beneficiary has in similar circumstances if the member's spouse also is a member of the fund.

(b) A dependent child is entitled to receive benefits based on the service of any parent who is a member of the fund.

**SECTION 6.02. DEATH BENEFIT ANNUITY FOR SURVIVING SPOUSES AND CHILDREN.**

(a) Subject to Section 6.03 of this Act and the provisions of this section, if a member or retiree receiving a disability pension under Section 5.03(a) of this Act dies leaving a surviving spouse or at least one dependent child, the surviving spouse and the children are entitled to receive from the fund an aggregate death benefit annuity, computed and payable from the date of the member's death. The surviving spouse may elect the annuity in an amount that is equal to either:

(1) 50 percent of the member's average total salary; or  
(2) the same percentage of the member's average total salary that the member would have been entitled to receive as a retirement annuity if the member could have retired on the date of death.

(b) The amount of a death benefit annuity computed under Subsection (a) of this section may not exceed the service retirement annuity to which a member with the same average total salary and with 27 years of service credit would be entitled.

(c) Subject to the provisions of this section, if a retiree other than a retiree receiving a disability pension under Section 5.03(a) of this Act dies leaving a surviving spouse or at least one dependent child, the surviving spouse and dependent children are entitled to receive from the fund an aggregate death benefit annuity, computed and payable from the date of the member's death, in an amount that is equal to the lesser of:

(1) the retirement annuity to which a member with the same average total salary as the deceased retiree and 27 years of service credit would be entitled if the member retired on the date of the deceased retiree's death; or

(2) the retirement annuity the retiree was receiving at the time of the retiree's death.

(d) Subject to Subsection (d-2) of this section, if, at the time a death benefit annuity becomes payable under Subsection (a) or (c) of this section, the deceased member or retiree leaves a surviving spouse and at least one dependent child, the board shall award:

(1) 75 percent of the annuity to the surviving spouse; and

(2) 25 percent of the annuity to:

(A) the dependent child, if there is only one; or

(B) if there is more than one dependent child, in equal shares to

each child.

(d-1) The allocation of an annuity under Subsection (d) of this section is effective as to all annuities payable by the fund as of October 1, 2009, that are payable in part to a surviving spouse and in part to one or more surviving children. This subsection applies only to benefits payable by the fund after September 30, 2009, and does not affect benefits paid or payable by the fund before October 1, 2009.

(d-2) If, at the time a death benefit annuity becomes payable under Subsection (a) or (c) of this section, a deceased member or retiree leaves a surviving spouse who is not entitled to an annuity on the date of death under Subsection (g-1) of this section and one or more dependent children, the dependent child or children shall be awarded 100 percent of the death benefit annuity until the annuity to the surviving spouse becomes effective under Subsection (g-3) of this section.

(e) If, at the time a death benefit annuity under Subsection (a) or (c) of this section becomes payable, the deceased leaves a surviving spouse and no dependent child, the board shall award the annuity to the surviving spouse.

(f) If, at the time a death benefit annuity under Subsection (a) or (c) of this section becomes payable, the deceased leaves no surviving spouse and at least one dependent child, the board shall award the annuity:

(1) to the dependent child, if there is only one; or

(2) if there is more than one child, in equal shares to each child.

(g) A child who is born after the date of retirement of the member is not entitled to a death benefit annuity under this Act unless the retiree was married to the other parent of the child on the date of retirement. A surviving spouse of a retiree whose status as a surviving spouse resulted from a marriage after the date of the retirement of the retiree is entitled to receive only the benefits, if any, provided under Subsection (g-1) of this section or Section 6.08 of this Act.

(g-1) Subject to Subsection (g-3) of this section, a surviving spouse of a retiree whose status as a surviving spouse resulted from a marriage after the date of the retirement of the retiree is entitled to receive the entire death benefit of a surviving spouse in this section if the surviving spouse was married to the retiree for a period of at least the five consecutive years preceding the date of the retiree's death. A surviving spouse of a retiree whose status as a surviving spouse resulted from a marriage after the date of the retirement of the retiree and was not married to the retiree for a period of the five consecutive years preceding the date of the retiree's death is entitled to receive only the benefits, if any, provided under Section 6.08 of this Act. The benefit provided by this subsection applies only with respect to a retiree death that occurs on or after October 1, 2007.

(g-2) The surviving spouse of a retiree who made an election under Subsection (m) of this section before October 1, 2007, and who does not cancel that election in accordance with Subsection (m) of this section is not entitled to receive the death benefit annuity provided for under Subsection (g-1) of this section.

(g-3) The death benefit to which a surviving spouse is entitled under Subsection (g-1) of this section as a result of a retiree's death that occurs on or after October 1, 2009, is payable by the fund on the date of the retiree's death if the surviving spouse is 55 years of age or older on the date of the retiree's death. If the surviving spouse is not 55 years of age or older on the date of the retiree's death, the annuity shall be payable by the fund on the date the surviving spouse reaches age 55. A surviving spouse who is not 55 years of age or older on the date of the retiree's death is not entitled to benefits from the fund during the period beginning on the date of the retiree's death and ending on the date the surviving spouse reaches age 55.

(h) If a member or retiree dies leaving a surviving spouse and at least one dependent child, the death benefit annuity payable to the surviving spouse shall be increased as of the day no child is entitled to receive benefits to the amount the spouse would have received had there been no dependent child.

(i) If a member or retiree dies leaving a surviving spouse and at least one dependent child, the death benefit annuity payable to the dependent children shall be increased as of the day the surviving spouse dies to the amount the children would have received had there been no surviving spouse.

(j) A dependent child as defined by Section 1.02(7)(B) of this Act, has the same rights as a dependent child as defined by Section 1.02(7)(A) of this Act, except that any death benefit annuity paid under this subsection to a dependent child as defined by Section 1.02(7)(B) of this Act may, at the discretion of the board, be reduced to the extent of any state pension or aid, including Medicaid, or any state-funded assistance received by the child, regardless of whether the funds were made available to the state by the federal government. In no other instance under this Act is a child entitled to any benefit after becoming 18 years of age.

(k) The board shall increase a death benefit annuity payable on October 1, 1999, to a dependent child or children who do not have a living parent on that date to the entire amount of the death benefit annuity that would have been awarded had the retiree or member died leaving no surviving spouse if a surviving spouse of the member or retiree is not entitled to receive benefits from the fund on October 1, 1999.

(l) A former spouse of a deceased member or retiree who is not the spouse of the member or retiree on the date of death of the member or retiree is not entitled to a benefit under this section.

(m) Subject to Subsections (n) and (o) of this section, a service retiree who marries after the date of retirement may elect to receive a reduced annuity during the retiree's lifetime and provide for a death benefit annuity to the retiree's surviving spouse. The amount of the reduced annuity and spousal death benefit shall be determined by the fund's actuary and shall be actuarially equivalent to the annuity the retiree was receiving immediately before the election under this subsection. An election made under this subsection may be canceled by the retiree before the retiree's death. After the election is canceled, the retiree shall be entitled to receive the same annuity to which the retiree would have been entitled if the election had not been made. A retiree who cancels an election under this subsection is not entitled to any additional benefits for the period of time before the cancellation. The board shall adopt policies and procedures governing elections and cancellation of elections under this subsection. An election or cancellation of an election made under this subsection must be made in accordance with the board's policies and procedures.

(n) A retiree may not make an election under Subsection (m) of this section at a time in which there are one or more dependent children of the retiree who would be entitled to a death benefit under this section on the death of the retiree

(o) A retiree may not make an election under Subsection (m) of this section after September 30, 2007. A cancellation of an election by a retiree under Subsection (m) of this section must be made on or before December 31, 2007.

### **SECTION 6.03. DEATH BENEFIT ANNUITY FOR SPOUSE OF MEMBER KILLED IN THE LINE OF DUTY.**

(a) The death benefit annuity of a surviving spouse of a member of the fund who is killed in the line of duty is governed by this section.

(b) The board shall consider the finding of a municipality to which this Act applies that a member was killed in the line of duty as a guideline for its determination in applying this section. On an application for survivor's benefits by a surviving spouse or dependent child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be

recomputed, applying Subsection (c) of this section, and any deficiency payment shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided by this Act, if a member is killed in the line of duty, the member's surviving spouse and dependent children are entitled to a death benefit annuity equal to the total salary of the member at the time of death. Rules provided by this section relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this subsection. A death benefit annuity computed under this subsection is divided in the manner described by Section 6.02 of this Act and is subject to the same cost-of-living adjustments that apply to pensions for service retirement.

#### **SECTION 6.04. REMARRIAGE; BENEFITS AFTER TERMINATION OF MARRIAGE.**

(a) The right of a surviving spouse or dependent child to annuity payments under this Act is not affected by the surviving spouse's remarriage or dependent child's marriage under either statutory or common law if the marriage or remarriage takes place on or after October 1, 1995.

(b) If after October 1, 1995, there is a termination of the remarriage of a surviving spouse or of the marriage of a dependent child, that person is entitled, on application, to 100 percent of the annuity that was in effect on the date of termination of benefits.

(c) A surviving spouse or dependent child who is unmarried but receiving reduced benefits because of a prior marriage that caused the benefits to be terminated is entitled to 100 percent of the annuity that was in effect on the original date of termination of benefits.

(d) The benefit provided under Subsections (b) and (c) of this section shall be provided prospectively beginning October 1, 1995, and the surviving spouse or dependent child is not entitled to receive any benefits or increases in benefits relating to any period before October 1, 1995.

#### **SECTION 6.05. AFFIDAVIT OF MARITAL STATUS.**

(a) A surviving spouse, a dependent child, or the guardian of a surviving spouse or dependent child may be required by the board to file an affidavit concerning the person's marital status or the marital status of the person's wards in any case in which marriage could affect the benefits of the surviving spouse or dependent child.

(b) If the surviving spouse, dependent child, or guardian fails or refuses to file an affidavit required under Subsection (a) of this section or if an incomplete, incorrect, or false affidavit is filed, the board may suspend annuity payments to that person indefinitely until the person complies with the requests and orders of the board.

#### **SECTION 6.06. COMMON-LAW MARRIAGES.**

Common-law marriages are not recognized under this Act and benefits may not be conferred on common-law spouses as beneficiaries unless a declaration of informal marriage was made and recorded under Sections 2.402 and 2.404, Family Code, and their subsequent amendments, or any successor statutes, before the member's death.

**SECTION 6.07. SURVIVING SPOUSE’S RIGHT TO SINGLE ENTITLEMENT.**

A surviving spouse, whether or not a member of the fund, is not entitled to more than one death benefit annuity from the fund. A surviving spouse who has been married to more than one deceased member or retiree is entitled to receive a death benefit annuity with respect to the deceased member or retiree that will provide the highest benefit.

**SECTION 6.08. LUMP-SUM DEATH BENEFIT.**

(a) Except as provided by Subsection (b) of this section, a surviving spouse of a retiree whose status as such resulted from any marriage after the date of the retirement of the retiree and who has been married to the retiree for a period of less than the five consecutive years preceding the date of the retiree's death, is entitled to a lump-sum death benefit because of the retiree’s death in the amount of \$15,000.

(b) A surviving spouse is not entitled to a lump-sum death benefit under this section if a child is entitled to receive death benefits under this Act as a result of the retiree's death.

(c) [Repealed effective October 1, 2007]

**SECTION 6.09. DEATH BENEFIT ANNUITIES TO DEPENDENT PARENTS.**

(a) If a contributing member in good standing of the fire or police department or a retiree dies before or after retirement and leaves no surviving spouse or child but leaves surviving a father and mother wholly dependent on that person for support, the dependent father and mother are entitled to receive one-third of the average total salary of the deceased member based on the same number of years of the member’s pay as is currently provided for computations of retirement annuities under Section 5.01 of this Act, the annuity to be equally divided between the father and mother as long as they are wholly dependent. If there is only one dependent, either father or mother, the board shall grant the surviving dependent an annuity not to exceed one-fourth that average total salary as computed under this subsection.

(b) An application for benefits under Subsection (a) of this section must be accompanied by a copy of the deceased member's or retiree's tax return filed for the last year ending before the member's or retiree's death or an explanation satisfactory to the board of why the tax return cannot be provided. The board may, on its own initiative, make a thorough investigation, determine the facts as to the dependency with respect to an application for benefits made under Subsection (a) of this section, and at any time, on the request of any beneficiary or any contributor to the fund, reopen any award made to any member or dependent of any member who is receiving annuity payments under this section and discontinue those payments as to all or any of them. The findings of the board under this section and all annuities granted under this section are final on all parties unless set aside or revoked by a court of competent jurisdiction.

**SECTION 6.10. SUSPENSION RIGHTS.**

If a member dies who is under suspension at the time of death, including an indefinite suspension that has not become final, the member's beneficiaries have the same rights as the beneficiaries of any other member under this Act.

**SECTION 6.11. DEATH BENEFIT FOR ACTIVE MEMBER'S ESTATE.**

If an active member dies and does not leave a beneficiary, the estate of the deceased member is entitled to a death benefit payment from the fund in an amount equal to the greater of:

- (1) 10 times the amount of an annuity computed in accordance with Section 5.01(f-1) of this Act using the deceased member's service credit and average total salary as of the date of death; or
- (2) the refund of the member's contributions that were picked up by the municipality.

**SECTION 6.115. DEATH BENEFIT FOR RETIREE'S ESTATE.**

If a retiree dies and does not leave a beneficiary, the estate of the retiree is entitled to a death benefit payment from the fund in an amount equal to 10 times the amount of the annuity awarded by the board effective on the retiree's date of retirement, less any retirement or disability annuity and any lump sum under Section 5.015 of this Act paid to the retiree.

**SECTION 6.12. 13TH AND 14TH CHECKS FOR BENEFICIARIES.**

(a) For any year in which the board authorizes disbursement of a 13th or 14th pension check to retirees under Section 5.11 or 5.12 of this Act, the board shall also authorize disbursement of a 13th or 14th check to each beneficiary entitled to receive an annuity in the last month of the fiscal year preceding the fiscal year in which the check is disbursed.

(b) The amount of the 13th or 14th check is equal to the amount of the annuity payment made in the last month of the preceding fiscal year, except the amount of the check shall be prorated for any beneficiary who has been receiving an annuity for less than one year so that the amount of the check is one-twelfth of the check that would have been paid to the beneficiary receiving an annuity for a full year times the number of full months an annuity has been paid.

**SECTION 6.13. GUARDIANSHIP.**

Any benefit payable under this article to a dependent child as defined by Section 1.02(7)(B) of this Act may be paid only to a guardian who is appointed in accordance with Chapter XIII, Texas Probate Code. Any benefit payable under this article to a dependent child as defined by Section 1.02(7)(A) of this Act may, at the board's discretion, be:

- (1) paid to a guardian appointed in accordance with Chapter XIII, Texas Probate Code; or
- (2) accrued by the fund and paid directly to the dependent child on the child's 18<sup>th</sup> birthday.

**SECTION 6.14. LUMP-SUM PAYMENT ELECTION FOR SURVIVING SPOUSES.**

(a) A surviving spouse of a member who is entitled to receive a death benefit under Section 6.02 of this Act may elect to receive a portion of the benefit in a lump-sum payment under this section.

(b) The lump-sum payment may be elected only by a surviving spouse:

(1) of a member who, on the date of death, is eligible:

(A) for service retirement; and

(B) to elect a Backward Deferred Retirement Option Plan; and

(2) who elects to receive a death benefit under Section 6.02(a)(2) of

this Act.

(c) If a member is killed in the line of duty and the deceased member's surviving spouse is entitled to a death benefit annuity under Section 6.03 of this Act, the surviving spouse may not elect a lump-sum payment under this section.

(d) The lump-sum payment is computed by dividing the annuity determined under Subsection (e) by 12 and multiplying the result by the number of months the surviving spouse elects under Subsection (f) of this section.

(e) The annuity used to compute the lump-sum payment is determined in the manner provided by Section 5.01(f-1) of this Act for retired members, using:

(1) the deceased member's average total salary for all months, excluding the number of months immediately preceding the member's date of death that equal the number of months elected by the surviving spouse under Subsection (f) of this section; and

(2) the amount of service credit as determined by Subsection (g) or (h) of this section.

(f) The surviving spouse must elect the number of months used in computing the lump-sum payment. The number of months may not exceed the lesser of:

(1) the number of months of service credit in excess of 20 years that the deceased member has on the date of death; or

(2) 60 months.

(g) Except as provided by Subsection (h) of this section, in determining the annuity under Subsection (e) of this section, the deceased member's service credit is computed as provided by Section 5.01(g) of this Act, less:

(1) the number of months elected by the surviving spouse under Subsection (f) of this section; and

(2) any service credit for unused sick leave to which the member would have been entitled.

(h) In determining the annuity under Subsection (e) of this section for a surviving spouse whose death benefit annuity is limited by Section 6.02(b) of this Act, the deceased member's service credit is the lesser of:

(1) the deceased member's service credit computed as provided by Section 5.01(g) of this Act, less the number of months elected by the surviving spouse under Subsection (f) of this section and less any service credit for unused sick leave to which the member would have been entitled; or

(2) 27 years.

(i) If a surviving spouse elects to receive a lump-sum payment under this section, the total death benefit annuity payable to the surviving spouse under Section 6.02 of this Act is reduced as provided by Subsection (j) of this section. The lump-sum election does not affect the amount of a death benefit annuity payable to a dependent child of a deceased member under Section 6.02 of this Act.

(j) The reduced annuity is determined in the manner provided by Section 5.01(f-1) of this Act for retired members, using:

(1) the deceased member's average total salary for all months, excluding the number of months immediately preceding the member's date of death that equal the number of months elected by the surviving spouse under Subsection (f) of this section; and

(2) the amount of service credit as determined by Subsection (k) or (l) of this section.

(k) Except as provided by Subsection (l) of this section, in determining the reduced annuity under Subsection (j) of this section, the deceased member's service credit is computed as provided by Section 5.01(g) of this Act, less the number of months elected by the surviving spouse under Subsection (f) of this section.

(l) In determining the reduced annuity under Subsection (j) of this section for a surviving spouse whose death benefit annuity is limited by Section 6.02(b) of this Act, the deceased member's service credit is the lesser of:

(1) the deceased member's service credit computed as provided by Section 5.01(g) of this Act, less the number of months elected by the surviving spouse under Subsection (f) of this section; or

(2) 27 years.

## **ARTICLE 7. INVESTMENTS AND FINANCIAL PROVISIONS**

**SECTION 7.01.** [Repealed effective October 1, 2005]

**SECTION 7.02. ACCOUNTS.**

The accounts of the fund and of the members shall be kept separately.

**SECTION 7.03. RESERVE RETIREMENT FUND.**

(a) The board shall determine a reasonably safe amount of surplus necessary to defray reasonable expenses of administering the fund.

(b) All other assets shall be designated as reserve retirement funds.

(c) Only the board may invest and manage the reserve retirement funds for the sole benefit of the plan participants and their beneficiaries.

**SECTION 7.04. INVESTMENT POWERS OF THE BOARD.**

(a) The board shall cause the reserve retirement funds to be invested in a manner that a prudent investor would invest, considering the purposes, terms, distribution requirements, and other circumstances of an enterprise with a like character and like aims.

(b) The board shall diversify the investment of the fund to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. In determining whether the board has exercised prudence concerning an investment decision, the investment of all assets of the fund, rather than the prudence of a single investment of the fund, shall be considered.

(c) The board may directly manage the investments of the fund or may choose and contract for professional management services. If the fund owns real estate, it may, at its discretion, establish organizations described by Section 501 (c)(2) or (25) of the code to hold title to the real estate.

(d) The board shall have the ultimate responsibility for the investment of the reserve retirement funds. The board may purchase securities or engage in limited partnerships or make other investments not specifically provided by this Act and shall have the authority of exercising discretion in determining the nature, type, quality, and size of any investment consistent with the investment policies it establishes.

#### **SECTION 7.05. PROFESSIONAL CONSULTANTS.**

(a) The board may contract for professional investment management services, financial consultants, independent auditors, attorneys, and actuaries. Only the board may enter into those contracts and may establish a reasonable fee for compensation.

(b) The board may designate its own custodian or master custodian to perform the customary duties involving the safekeeping of the assets and the execution of transactions of either domestic or foreign securities. The board may engage in a securities lending program consistent with the benefits to plan participants and their beneficiaries.

#### **SECTION 7.06. INVESTMENT CONSULTANT QUALIFICATIONS.**

In appointing investment consultants, the board shall require that the investment consultant be:

- (1) registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.) and its subsequent amendments;
- (2) a bank as defined by that Act; or
- (3) an insurance company qualified to perform investment services under the laws of more than one state.

### **ARTICLE 7A. STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE REQUIREMENTS**

#### **SECTION 7.51. POLICY.**

(a) A member of the board, the executive director, or another employee of the fund may not buy, sell, or exchange any property to or from the fund, deal with the assets of the fund in the person's own interest or for the person's own account, or receive any consideration for the person's personal account from any person dealing with the fund in connection with the income or assets of the fund.

(b) To implement Subsection (a) of this section and to strengthen the faith and confidence of the members and beneficiaries of the fund, the board shall develop standards of conduct and financial disclosure requirements to be observed by each member of the board and by the executive director in the performance of official duties.

**ARTICLE 8.**  
**EXCESS BENEFIT PLAN**  
**FOR FIRE FIGHTERS AND POLICE OFFICERS**

**SECTION 8.01. CREATION OF PLAN.**

A separate, nonqualified, unfunded excess benefit plan containing the provisions of this subchapter is created outside the fund. The plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Section 415(m) of the code.

**SECTION 8.02. DEFINITIONS.**

In this article:

(1) "Excess benefit participant" means any member whose retirement benefits as determined on the basis of all qualified plans, without regard to the limitations of Section 5.10(a) of this Act and comparable provisions of other qualified plans, would exceed the maximum benefit under Section 415 of the code.

(2) "Excess benefit plan" means the excess benefit plan created by this article for the benefit of eligible members.

(3) "Maximum benefit" means the retirement benefit a member or the member's spouse, dependent child, or dependent parent is entitled to receive from all qualified plans in any month after applying Section 5.10(a) of this Act and any similar provisions of any other qualified plans designed to conform to Section 415 of the code.

(4) "Qualified plan" means the fund and any other plan that is maintained by the municipality for the exclusive benefit of some or all of the members of the fund and that has been found by the Internal Revenue Service to be qualified or has been treated by the municipality as a qualified plan under Section 401 of the code.

(5) "Unrestricted benefit" means the monthly retirement benefit a member or the member's spouse, dependent child, or dependent parent would have received under the terms of all qualified plans except for the restrictions of Section 5.10(a) of this Act and any similar provisions of any other qualified plans designed to conform to Section 415 of the code.

**SECTION 8.03. EXCESS BENEFIT ENTITLEMENT.**

(a) An excess benefit participant who is receiving benefits from the fund is entitled to a monthly benefit under the excess benefit plan in an amount equal to the lesser of:

- (1) the member's unrestricted benefit less the maximum benefit; or
- (2) the amount by which the member's monthly benefit from the fund has been reduced because of the limitations of Section 415 of the code.

(b) In the case of the death of an excess benefit participant whose spouse, dependent child, or dependent parent is entitled to preretirement or postretirement death benefits under a qualified plan, the spouse, dependent child, or dependent parent is entitled to a monthly benefit under the excess benefit plan equal to the benefit determined in accordance with Article 6 of this Act without regard to the limitations under Section 5.10(a) of this Act or Section 415 of the code, less the maximum benefit.

(c) Any benefit to which any person is entitled under this section shall be paid at the same time and in the same manner as the benefit would have been paid from the fund if payment of the benefit from the fund had not been precluded by Section 5.10(a) of this Act. An excess benefit participant or any beneficiary may not elect to defer the receipt of all or any part of a payment due under this article.

#### **SECTION 8.04. MANNER OF ADMINISTRATION.**

(a) The board shall administer the excess benefit plan. Except as otherwise provided by this section, the board has the same rights, duties, and responsibilities regarding the excess benefit plan as the board has for the fund.

(b) A consultant, independent auditor, attorney, or actuary selected to perform services for the fund under Section 7.05 of this Act shall also perform services for the excess benefit plan, but the person's fees for services for the excess benefit plan may not be paid by the fund. The actuary employed under Section 7.05 of this Act shall advise the board of the amount of benefits that may not be provided from the fund solely by reason of the limitations of Section 415 of the code and the amount of municipal contributions that will be made to the excess benefit plan rather than to the fund.

#### **SECTION 8.05. FUNDING OF BENEFITS.**

(a) Contributions may not be accumulated under the excess benefit plan to pay future retirement benefits. Instead, each payment of municipal contributions that would otherwise be made to the fund under Section 4.05 of this Act shall be reduced by the amount determined by the board as necessary to meet the requirements for retirement benefits under the excess benefit plan, including reasonable administrative expenses, until the next payment of municipal contributions is expected to be made to the fund. The municipality shall then pay to the excess benefit plan out of the withheld contributions, not earlier than the 14th day before the date of each distribution of monthly retirement benefits is required to be made from the excess benefit plan, the amount necessary to satisfy the obligation to pay monthly retirement benefits from the excess benefit plan. The board shall satisfy the obligation of the excess benefit plan to pay retirement benefits out of the municipal contributions transferred for that month.

(b) Municipal contributions otherwise required to be made to the fund under Section 4.05 of this Act and any other qualified plan shall be divided into those contributions required to pay retirement benefits under this article and contributions paid into and accumulated to pay the maximum benefits required under the qualified plan. Municipal contributions made to provide retirement benefits under this article may not be commingled with the money of the fund or any other qualified plan.

**SECTION 8.06. EXEMPTIONS.**

Benefits under this Article are exempt from garnishment, assignment, attachment, judgment, and other legal process to the same extent as retirement annuities under Section 1.05 of this Act.