

CHAPTER 872

H.B. No. 1944

AN ACT

relating to certain public retirement systems for police and fire personnel.

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

SECTION 1. Article 6243a-1, Revised Statutes, is revised to read as follows:

Art. 6243a-1. PENSION SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS IN CERTAIN CITIES

PART 1. PURPOSE

Sec. 1.01. AMENDMENT, RESTATEMENT, AND CONSOLIDATION. (a) The purpose of this article is to restate and amend the provisions of a former law governing the pension funds for police officers and fire fighters in certain municipalities (Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933, also known as Article 6243a) to permit the consolidation of the terms of certain pension plans created under Sections 1, 11A, and 11B of that Act for the purpose of simply and accurately reflecting the joint administration of the plans.

(b) The provisions of this article are entirely consistent with all terms and conditions relating to benefits and benefit entitlement previously contained in the plans. This article does not intend to take away or reduce any benefit contained in the plans created under former Article 6243a.

PART 2. GENERAL PROVISIONS

Sec. 2.01. DEFINITIONS. In this article:

- (1) "Active service" means any period that a member receives compensation as a police officer or fire fighter from either department for services rendered.
- (2) "Actuarial equivalent" means a form of benefit differing in time, duration, or manner of payment from a standard benefit payable under this article but having the same value when computed using the assumptions set forth in this article.
- (3) "Administrator" means the person designated by the board to supervise the affairs of the pension system.
- (4) "Alternate payee" has the meaning given the term by Section 414 of the code or any successor provision.
- (5) "Annual additions" means the sum of the following amounts credited to a member's account under any defined contribution plan maintained by the city for the limitation year:

(A) city contributions;

(B) member contributions, other than rollover contributions from a plan maintained by any employer other than the city;

(C) forfeitures; and

(D) amounts allocated after March 31, 1984, to an individual medical account, as defined in Section 415(1)(2) of the code, that is part of a pension or annuity plan maintained by the city.

The term does not include amounts described in Paragraph (D) of this subdivision for the purpose of computing the percentage limitation described in Section 415(c)(1)(B) of the code. For any limitation year beginning before January 1, 1987, only that portion of member contributions equal to the lesser of member contributions in excess of six percent of 415 compensation or one-half of member contributions to the combined pension plan or any qualified defined contribution plan maintained by the city is treated as annual additions.

(6) "Annual benefit" means the aggregate benefit attributable to city contributions payable annually under the combined pension plan exclusive of any benefit not required to be considered for purposes of applying the limitations of Section 415 of the code to the combined pension plan, payable in the form of a straight life annuity beginning at age 62 with no ancillary benefits. Solely for purposes of computing the limitations under the combined pension plan, benefits actually payable to a pensioner are adjusted to the actuarial equivalent of a straight life annuity pursuant to Section 8.01 of this article even though no member may actually receive a benefit in the form of a straight life annuity.

(7) "Article 6243a" means Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933 (former Article 6243a, Vernon's Texas Civil Statutes), pertaining to a pension system for police officers, fire fighters, and fire alarm operators in certain cities.

(8) "Assignment pay" means monthly pay, in addition to salary, granted to a Group B member and authorized by the city council for the performance of certain enumerated duty assignments.

(9) "Base pay" means the maximum monthly civil service pay from time to time established by the city for a police officer or fire fighter, exclusive of any other form of compensation.

(10) "Base pension" means the amount of retirement, death, or disability benefits computed under this article at the time a Group B member leaves active service, dies, or becomes disabled.

(11) "Board" means the board of trustees created for the purpose of administering the pension system.

(12) "Child" means an unmarried person under the age of 19 whose natural or adoptive parent is a primary party.

(13) "City" means each municipality having a population of more than 1,000,000 and less than 1,500,000, according to the most recent federal census.

(14) "City council" means the governing body of the city.

(15) "City service incentive pay" means annual pay, adjusted by the city from time to time, in addition to the salary of a member granted to the member under the authority of the city charter and received by the member during active service.

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

(17) "Combined pension plan" means any pension plan created pursuant to this article.

(18) "Computation pay" shall be used in determining the amount of a Group B member's contribution under Section 4.03(d) of this article and in determining the base pension of any benefits to be paid to a Group B member or the member's qualified survivors and means the sum of the following:

(A) the monthly rate of pay of a Group B member for the highest civil service rank the person holds, from time to time, as a result of a competitive examination; plus

(B) the monthly rate of pay of a Group B member as educational incentive pay; plus

(C) the monthly rate of pay of a Group B member as longevity pay, as authorized by the legislature; plus

(D) the city service incentive pay, computed on a monthly basis, of a Group B member.

Any compensation received by a Group B member, other than that noted in Paragraphs (A)–(D) of this subdivision (for example, compensation for overtime work and the monthly rate of pay a member would receive from the city in the form of assignment pay), will not be considered in determining the computation pay of a Group B member. Any lump-sum payments for compensatory time, unused sick leave, unused vacation time, or city service incentive pay payable after a Group B member leaves active service, death, disability, resignation, or any other type of termination may not be considered in determining the computation pay of any Group B member. Computation pay for a Group B member for any given month is determined on the monthly rates of pay due the Group B member for the entire month. If a Group B member works less than the member's assigned schedule for any given month, the computation pay for the Group B member shall be prorated for the portion of the month that the Group B member worked.

(19) "Educational incentive pay" means incentive pay designed to reward completion of certain hours of college credit, adjusted by the city from time to time, that is paid to a member in addition to the member's salary.

(20) "Department" means either the police department of the city, the fire department of the city, or both the police and fire departments of the city together.

(21) "Dependent parent" means a natural parent or parent who adopted a primary party and who immediately before the death of a primary party received over half of the parent's financial support from the primary party.

(22) "Disability retirement" means any period that a pensioner receives a disability pension.

(23) "415 compensation" means a member's wages, salary, and other amounts received for personal services rendered in the course of employment with the city during a limitation year, but does not include:

(A) contributions made by the city to a plan of deferred compensation, or a simplified employee pension plan, to the extent such contributions are excludable from the member's gross income;

(B) any distributions from a plan of deferred compensation, or a simplified employee pension plan, to the extent the distributions are excludable from the member's gross income;

(C) other amounts that received special tax benefits, such as premiums for group term life insurance, to the extent that the premiums are not includable in the gross income of the member, or contributions made by the city, including contributions toward the purchase of an annuity described by Section 403(b) of the code, whether or not contributed pursuant to a salary reduction agreement and whether or not the amounts are actually excludable from the gross income of the member; and

(D) for any limitation year beginning after December 31, 1988, compensation in excess of \$200,000, adjusted in a manner permitted under Section 415(d) of the code.

(24) "Fund" means all funds and property held for the benefit of all persons who are or who may become entitled to any benefits under any plan within the pension system, together with all income, profits, or other increments.

(25) "Group A member" means any police officer or fire fighter described by Section 5.01(a)(1) of this article.

(26) "Group B member" means any police officer or fire fighter described by Section 5.01(a)(2) of this article.

(27) "Health director" means any qualified physician designated from time to time by the board.

(28) "Limitation year" means the plan year of the combined pension plan and any defined benefit plan or defined contribution plan of the city in which a member participates.

(29) "Longevity pay" means pay in addition to the salary of a member granted under Section 141.032, Local Government Code, for each year of active service completed by a member in either department.

(30) "Member" means both Group A and Group B members.

(31) "Member's account" means an account established and maintained for a member with respect to the member's total interest in one or more defined contribution plans under this article or maintained by the city resulting in annual additions.

(32) "Old plan" means any pension plan created pursuant to Section 1 of Article 6243a.

(33) "Pensioner," "Group A pensioner," or "Group B pensioner" means a former member of the pension system who is on either a service or disability retirement.

(34) "Pension service" means the time, in years, and prorated for fractional years, that a member has contributed to the fund under the terms of the combined pension plan or any plan within the pension system.

(35) "Pension system" means the fund and any plans created pursuant to this article and that are intended to be qualified under Section 401(a) of the code.

(36) "Plan A" means any plan created pursuant to Section 11A of Article 6243a.

(37) "Plan B" means any plan created pursuant to Section 11B of Article 6243a.

(38) "Police officer" or "fire fighter" means a police officer, fire fighter, fire alarm operator, fire inspector, apprentice police officer, apprentice fire fighter, or similar employee of either department as defined in the classifications of the personnel department of the city.

(39) "Primary party," "Group B primary party," or "Group A primary party" means a member, former member, or pensioner.

(40) "Qualified actuary" means either:

(A) an individual who is a Fellow of the Society of Actuaries, a Fellow of the Conference of Actuaries in Public Practice, or a member of the American Academy of Actuaries; or

(B) a firm that employs one or more persons who are Fellows of the Society of Actuaries, Fellows of the Conference of Actuaries in Public Practice, or members of the American Academy of Actuaries and are providing services to the pension system.

(41) "Qualified domestic relations order" has the meaning provided by Section 414 of the code.

(42) "Qualified survivor" means a person who is eligible to receive survivor benefits after the death of a primary party and includes:

(A) a surviving spouse, if the spouse was continuously married to the primary party both at the date when the primary party either voluntarily or involuntarily left active service as a member and at the date of the primary party's death;

(B) all surviving, unmarried, legitimate, and legally adopted children under 19 years of age who were born or adopted before the primary party as a member either voluntarily or involuntarily left active service or who were born after a member left active service if the mother was pregnant before the member left active service; and

(C) a surviving dependent parent of a primary party if the primary party is not survived by a spouse or child eligible for benefits.

(43) "Service retirement" means any period that a pensioner receives a retirement pension but does not include any period of disability retirement.

(44) "Spouse" means the husband or wife of a primary party recognized under the laws of this state.

(45) "Total wages and salaries" means all pay received by a member of any plan within the pension system from the city, excluding any lump-sum payments for unused sick time or unused vacation time accrued by any member and payable as the result of the member's death, disability, resignation, or any other reason for leaving active service.

(46) "Trustee" means a member of the board.

Sec. 2.02. ACTUARIAL ASSUMPTIONS. (a) 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 article, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the pension system's qualified actuary and approved by the board.

(b) The actuarial assumptions being used at any particular time shall be attached by the administrator as an addendum to this article and treated for all purposes as a part of any plan created by this article.

(c) The actuarial assumptions may be changed by the pension system's qualified actuary at any time if approved by the board, but no such change in actuarial assumptions may result in any decrease in benefits accrued as of the effective date of the change.

PART 3. ADMINISTRATION

Sec. 3.01. BOARD OF TRUSTEES. (a) The pension system shall be administered by the board.

(b) The board consists of seven trustees who shall be selected and shall serve as follows:

(1) The city council shall name from among its members three council members who shall serve as trustees of the board. The council member trustees shall be named as soon as possible after the first Monday in May of each odd-numbered year and shall serve for the term of office to which they were elected as council members. If there is a vacancy in any of the council member trustees' seats on the board, the city council shall name another council member to serve out the remainder of the unexpired term.

(2) The police and fire department members of the pension plans within the pension system shall separately, by department and not by plan, elect from among their respective memberships two active police officer and two active fire fighter members. On their election, each of the trustees under this subdivision shall execute a written affirmation of the person's undertaking to faithfully perform duties to the pension system. The police and fire department trustees shall serve terms of four years each, the terms being staggered so that one term, but not both from the same department, shall expire on June 1 of each odd-numbered year. If a vacancy occurs among the police and fire department trustees, the vacancy shall be filled in accordance with the provisions of Subsection (d) of this section. The police and fire department trustees will continue to serve beyond the expiration of their terms, if their successors have not been elected and affirmed in writing their undertaking to faithfully perform their duties to the pension system, until their successors are elected and have affirmed in writing their undertaking to faithfully perform their duties to the pension system.

(c) In addition to the seven trustees of the board there are three alternate trustees of the board who shall serve on the board during the absence of a regular trustee and who may serve on any subcommittee of the board. In addition, the alternate trustees may, and generally are expected to, attend all meetings of the board and enter into any discussion or deliberation but may not vote unless serving in place of a regular trustee. Alternate trustees shall be kept fully apprised of all developments as any regular trustee, including when the board deems appropriate, and may attend any seminars and meetings as the board approves. The alternate trustees shall be selected and shall serve as follows:

(1) The city council shall name from among its members one council member who shall serve as an alternate trustee of the board and who may sit as a trustee in the absence of any of the three council trustees. The council alternate shall be selected in the same manner as the regular council trustees and shall serve for a like term.

(2) One alternate trustee from the police department and one alternate trustee from the fire department shall be elected in the same manner as a regular trustee. An alternate trustee may only replace a regular trustee from the same department. An alternate trustee serves a term of four years expiring on June 1 of every second year. Alternate trustees will serve beyond the expiration of their terms if necessary until their successors have been elected and have affirmed in writing their undertaking to faithfully perform their duties to the pension system. If an alternate trustee cannot serve beyond the expiration of the person's term, the board shall appoint a new alternate trustee from the department

from which the vacancy occurs to serve until a successor has been elected and has affirmed in writing that the person will undertake to faithfully perform the person's duties to the pension system.

(d) If a vacancy occurs among the police or fire department alternate trustees, for reasons other than the failure to elect a successor alternate trustee or the occurrence of a vacancy among the regular trustees of either department, the board shall appoint a new alternate trustee representing the department from which the vacancy occurs to serve as the alternate trustee for the remainder of the alternate trustee's term. A candidate is not eligible for election to an alternate trustee position and to a regular trustee position during the same election.

(e) If a vacancy occurs among the police or fire department regular trustees, the alternate trustee representing the department from which the vacancy occurs shall serve as the regular trustee for the remainder of the unexpired regular trustee's term. Thereafter, the board shall appoint a new alternate trustee from the same department to serve for a period ending on the earlier of the expiration of the regular trustee's term or the original alternate trustee's term. If the original alternate trustee's term has not expired after serving in place of the regular trustee, then that person shall serve out the remainder of the unexpired term. After a new regular trustee has been elected, the original alternate trustee shall return to serve as an alternate trustee until the regular trustee's term has expired. However, if the original alternate trustee, while an alternate trustee, is elected to a full term as a regular trustee before the expiration of the term as an alternate trustee, the term of the new alternate trustee extends until the expiration of the original alternate trustee's term.

(f) The election of the trustees representing the police and fire departments shall be held under the supervision of the board, and the board shall adopt such rules and regulations governing the election procedure as it considers appropriate, as long as the rules and regulations are consistent with generally accepted principles of secret ballot and majority rule. The rules and regulations adopted by the board shall be recorded in the minutes of the board and made available to the members of any pension plan within the pension system.

(g) The board shall, in June of each odd-numbered year, elect from among its trustees a chairman, vice chairman, and a deputy vice chairman, each to serve for two-year terms. In addition, the board may elect, if it so chooses, a second deputy vice chairman to serve during the term of the incumbent chairman. The vice chairman shall be authorized to act in the place of the chairman in all matters pertaining to the board. In the absence of both the chairman and the vice chairman, the deputy vice chairman shall be authorized to act. In the absence of the chairman, vice chairman, and deputy vice chairman, the duties shall fall to the second deputy vice chairman.

(h) The administrator, or in the administrator's absence a member of the administrative staff designated by the board, shall serve as the secretary of the board.

(i) The board shall serve without separate compensation from the fund, but with entitlement to any appropriate compensation from the city as if the board members were performing their regular functions for the police or fire department. The board shall meet not less than once each month and may meet at any time on the call of its chairman.

(j) The board has full power to make rules and regulations pertaining to the conduct of its meetings and to the operation of the pension system as long as its rules are not inconsistent with the terms of this article, any pension plan within the pension system, or the laws of this state or the United States to the extent applicable.

(k) The board has full power, through the chairman, to issue process for witnesses and to administer oaths to witnesses and examine witnesses as to any matter affecting retirement, disability, or death benefits under any pension plan within the pension system, and to compel witnesses to testify. In addition, the board may request investigative services from either department in connection with any matter before the board.

(l) The board has the responsibility for the administration of the pension system and shall order payment from the fund in accordance with the terms of the appropriate plans within the pension system. Money from the fund may not be paid except on order of the board.

(m) The board has full power to invest the assets of the fund in accordance with Section 4.07 of this article.

(n) Four trustees of the board constitute a quorum at any called meeting, except that a trustee from the police department and a trustee from the fire department must be present to conduct business.

(o) No action may be taken by the board except at a meeting, and no action shall be taken during a meeting without the approval of a majority of the trustees present. Only actions of the board taken or approved of during a meeting are binding on the board, and no other written or oral statement or representation made by any person is binding on the board or the pension system.

Sec. 3.02. PROFESSIONAL CONSULTANTS. In addition to the authority of the board to employ the services of certain consultants set forth in this article, the board has the authority to employ the services of any professional consultant whenever the services of the consultant are considered necessary or desirable and in the best interests of the pension system. A professional consultant shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

Sec. 3.03. LEGAL ADVISOR. (a) The city attorney of the city may ex officio be the legal advisor to the board.

(b) The city attorney or an assistant city attorney shall attend all meetings of the board and advise the board on any matter on which the board requests a legal opinion from the city attorney.

(c) The board may retain other attorneys to represent the board or to give advice. Compensation for other attorneys shall be made in accordance with Section 4.01 of this article.

Sec. 3.04. APPOINTMENT OF ADMINISTRATOR. (a) The board has the authority to appoint an administrator to carry out the business of the board and to keep a record of the proceedings of the board. The administrator, in carrying out the business of the board within the scope of the administrator's responsibility, may not be considered a fiduciary with respect to the pension system.

(b) Subject to the approval of the board, the administrator may select any number of persons to assist the administrator.

(c) Both the administrator and those persons selected to assist the administrator may be considered employees of the city. Unless otherwise delegated to the administrator, the board shall have the ultimate authority to retain or terminate the engagement of any persons selected under this subsection.

PART 4. FINANCES

Sec. 4.01. PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL SERVICES FEES. (a) The board shall pay for all costs of administration, including the cost of salaries of the administrator, assistant administrator, and administrative staff, office expenses, adequate office space and associated utilities, and professional consultants or professional services, out of income from the fund when it is actuarially determined that the payments will not have an adverse effect on the payment of benefits from any of the plans within the pension system and when in the judgment of the board the costs are necessary. The city shall provide for costs of administration if the board determines that payment of the costs by the fund will have an adverse effect on the payment of benefits from any plan within the pension system.

(b) Notwithstanding Subsection (a) of this section, on request of the board, the city shall provide the administrator and the administrator's staff with first class, Class "A" office space at a city-owned office facility. The office space, as well as all associated utilities, shall be provided at no expense to the pension system.

(c) No expenditure for the costs of administration or payment of any fee for professional consultants or professional services may be made from the fund without the approval of the board.

(d) After the board has developed an annual budget for the pension system, the budget shall be presented to the city's budget office for comment. The city's budget office may

request the board to reconsider the appropriation for any expenditure at a board meeting, but the board shall make the final determination concerning any appropriation.

Sec. 4.02. **USE OF PUBLIC FUNDS.** (a) The financial share of the cost of the pension system to be paid out of the public treasury shall be as provided by this section.

(b) Funds contributed by the city as its share of the amount required to finance the payment of benefits under the pension system may be used for no other purpose. The contributions shall be annually appropriated by the city council and periodically paid on the basis of a percentage of the total wages and salaries of the members of the police and fire departments who are members of each of the plans within the pension system. The amount of this percentage and any change in it may be determined only by the legislature or by a majority vote of the voters of the city.

(c) Funds shall be appropriated by the city to carry out various other provisions contained in this article that authorize expenditures in connection with the administration of the pension system.

(d) The percentage of required contributions from the city shall be in accordance with the following schedule and any increase or decrease in city contributions shall occur automatically on any increases or decreases in the members' contribution percentage:

<u>City Contributions</u>	<u>Member Contributions</u>
28-1/2%	9%
27-1/2%	8-1/2%
26%	8%
24-1/2%	7-1/2%
23%	7%
21-1/2%	6-1/2%

(e) The city may elect to contribute more than that required in the schedule provided by Subsection (d) of this section, except that the city's contribution percentage may not exceed 28 1/2 percent unless approved as provided by Subsection (b) of this section. Further, in no event may the city's contribution be less than 21 1/2 percent unless approved as provided by Subsection (b).

(f) For purposes of Subsection (d) of this section, a member's contribution rate, regardless of the plan of which the person is a member, is considered to be the highest contribution rate of any member of any pension plan within the pension system.

Sec. 4.03. **MEMBER CONTRIBUTIONS.** (a) Each Group A member of the combined pension plan shall have 6.5 percent of base pay deducted from the member's wages each month, and the contributions shall be promptly remitted to the fund by the city.

(b) Each member shall continue to contribute to the fund under the applicable terms of this section until the member leaves active service with either department or until the beginning of the member's 33rd year of pension service, at which time the member shall cease making contributions.

(c) Each Group B member shall authorize the city to deduct from the member's salary a percentage of the member's computation pay. The authorization shall be in writing and filed with the administrator.

(d) Each Group B member shall have 8.5 percent of the member's computation pay deducted from the member's wages each month, and the contributions shall be promptly remitted to the fund by the city.

(e) The city shall determine the frequency of deductions for member contributions, as long as there is at least one deduction each month.

(f) Each Group B member shall contribute to the fund beginning on the effective date of the member's Group B membership.

(g) The percentage of base pay contributed by Group A members or computation pay contributed by Group B members may not be altered except by an amendment pursuant to the terms of Section 4.02 of this article.

(h) The only purposes for which member contributions to the fund and the investment income derived from member contributions may be applied are:

(1) to the payment of benefits prescribed by this article;

(2) to the payment of such administrative and professional service costs of the pension system as are provided for under Section 4.01 of this article or as may be within the discretion of the board to incur; and

(3) to invest any surplus in accordance with Section 4.07 of this article.

Sec. 4.04. REFUND OF GROUP B MEMBER CONTRIBUTIONS. (a) A Group B member who, either voluntarily or involuntarily, leaves active service is entitled to a refund from the fund of the total amount of the member's Plan B and Group B contributions, without interest, that were paid beginning with the effective date of the member's Group B membership or membership in Plan B. A refund under this subsection results in an appropriate reduction of pension service.

(b) Old plan or Plan A contributions paid to the fund by a Group B member may not be refunded from the fund.

(c) A former Group B member desiring a refund of the Plan B or Group B contributions the person made to the fund must make written application for the refund with the administrator. In no case may any refund be made to any former Group B member before the expiration of 30 days after the date the person leaves active service.

(d) Subject to Subsection (k) of this section, if a Group B member with less than five years of pension service either voluntarily or involuntarily leaves active service and fails to make written application for a refund of contributions within three years after the date the notice described by Subsection (j) of this section is made by the board, the person forfeits the right to withdraw any portion of the contribution, and the total amount of Plan B and Group B contributions the person made will remain in the fund. If the Group B member described by this subsection dies after leaving active service, the person's heirs or, if there are no heirs, the deceased member's estate may apply for the refund of the person's contributions, resulting in an appropriate loss of pension service if the application is filed with the administrator within three years after the date the notice described by Subsection (j) of this section is made by the board. Subject to Subsection (k) of this section, if a Group B member's heirs or estate fails to apply for a refund of the Group B member's contributions within the three-year period described by this subsection, the heirs and the estate forfeit any right to the contributions, and the total amount of the Plan B and Group B contributions made by the Group B member will remain in the fund.

(e) Subject to Subsection (k) of this section, if a Group B member with five or more years of pension service either voluntarily or involuntarily leaves active service and fails to make written application for a refund of the person's Plan B and Group B contributions within three years after the date the notice described by Subsection (j) of this section is made by the board, the person forfeits the right to withdraw any portion of the contributions, and the total amount of the contributions will remain in the fund. A Group B member described by this subsection may, however, apply for benefits under this article or, if the Group B member dies before the member is eligible to apply for Group B benefits, the person's heirs or, if there are no heirs, the deceased member's estate may apply for benefits in accordance with the provisions of this article, or the heirs or the estate may apply for a refund of the Group B member's Plan B and Group B contributions, resulting in an appropriate loss of pension service. Subject to Subsection (k) of this section, if a Group B member's heirs or estate fails to apply for a refund of the Group B and Plan B member's contributions within the three-year period described by this subsection, the heirs and the estate forfeit any right to the contributions, and the total amount of the Plan B and Group B contributions made by the Group B member will remain in the fund.

(f) If a Group B member, other than a Group B member who elects or has elected to receive a Group A benefit or a benefit determined under the old plan or Plan A, with five or more years of pension service either voluntarily or involuntarily leaves active service, the person is entitled to:

(1) have the total amount of the person's Plan B and Group B contributions to the fund refunded in accordance with Subsection (a) of this section, which results in a loss of all of the person's accrued pension service; or

(2) elect to take a refund of less than the total amount of the person's Plan B and Group B contributions while leaving a sufficient amount to retain pension service amounting to five or more years.

(g) If a Group B member elects a refund of a portion of the person's contributions under Subsection (f)(2) of this section, the amount of the refund shall equal the total amount of the person's Plan B and Group B annual contributions, without interest, for each full year of pension service cancelled, computed based on the earliest contributions made.

(h) A former Group B member who returns to active service is permitted to repay to the fund any previously withdrawn employee contributions and receive pension service as a Group B member if, before again leaving active service, the Group B member repays completely to the fund the previously withdrawn contributions with interest, calculated at the interest rate from time to time used in the pension system's actuarial assumptions, compounded annually, on the previously withdrawn contributions for the period from the date the contributions were withdrawn until the date the principal and accrued interest are repaid in full.

(i) If a person becomes a Group B member under Section 5.01(b) of this article and again, either voluntarily or involuntarily, leaves active service and makes application for a refund of contributions under this section, the person is entitled to a refund from the fund of the following:

(1) the amount of Group B contributions to the fund, without interest, that were paid from the date the person returned to active service following service or disability retirement; plus

(2) the excess, if any, of:

(A) the person's Plan B and Group B contributions to the fund, without interest, that were paid from the effective date of the person's original Group B or Plan B membership in Plan B until the time the person originally left active service because of the service or disability retirement; less

(B) the total amount of benefits the person received during service or disability retirement.

(j) On the 50th anniversary of the birth of a Group B member described by Subsection (d) or (e) of this section, or on the board's receipt of notice of the death of the Group B member, the board shall, by registered or certified mail, return receipt requested, attempt to notify the Group B member or the member's heirs or estate, as applicable, of the status of their entitlement to a refund of contributions from the fund.

(k) A Group B member described by Subsection (d) or (e) of this section or the heirs or estate of the Group B member shall have their right, title, interest, or claim to a refund of the Group B member's contributions reinstated only on the board's grant of their written request for a reinstatement and refund. The board's decision shall be based on a uniform and nondiscriminatory policy that it shall, from time to time, adopt.

Sec. 4.05. INVESTMENT COUNSELOR; QUALIFICATIONS. (a) The board may employ from time to time an investment counselor to advise the board in the investment and reinvestment of the assets of the fund. Only the following are eligible for employment as an investment counselor:

(1) any organization whose regular business functions include rendering investment advisory services to pension and retirement funds and that is registered as an "investment adviser" under the Investment Advisers Act of 1940; and

(2) any bank, as defined in the Investment Advisers Act of 1940, that maintains a trust department and offers investment services to pension and retirement funds.

(b) The investment counselor shall receive such compensation as may be determined by the board and as authorized by Section 4.01 of this article.

Sec. 4.06. INVESTMENT CUSTODY ACCOUNT OR MASTER TRUST AGREEMENTS. (a) If the board contracts for investment management services as authorized by

Section 4.07 of this article, it may, with respect to every such contract, also enter into an investment custody account agreement, designating one or more banks as custodian or master trustee for any assets of the fund.

(b) Under a custody account or master trust agreement, the board shall require the designated bank to perform the duties and assume the responsibilities of a custodian in relation to the investment contract to which the custody account or master trust agreement is established.

(c) The authority of the board to make a custody account or master trust agreement is supplementary to its authority to make an investment management contract. Allocation of assets to a custody account or master trust shall be coordinated by the administrator, as authorized by the board, and the bank designated as custodian or master trustee for the assets.

(d) Any custody account or master trust agreement made by the board shall establish such compensation for the custodian or master trustee as may be determined by the board and as authorized by Section 4.01 of this article.

Sec. 4.07. INVESTMENT OF SURPLUS. (a) If the board determines that there is in the fund a surplus exceeding a reasonably safe amount to take care of current demands on the pension system, the board may invest or direct the investment of the surplus for the sole benefit of the pension system.

(b) In making investments and supervising investments, trustees shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to probable income from the assets as well as the probable safety of their capital.

(c) The board has the ultimate responsibility for the investment of funds. The board may exercise this responsibility directly by purchasing or selling securities or other investments, or it may exercise discretion in determining the procedure that it deems most efficient and beneficial for the pension system in carrying out the responsibility. The board may contract for professional advisory services regarding the purchase or sale of securities or other investments pursuant to Section 3.02 of this article. A professional advisory service shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

(d) The board also has the authority to contract for professional investment management services. Any contract that the board makes with an investment manager shall set forth policies and guidelines of the board for the use of standard rating services and shall include specific criteria for determining the quality of investments. A professional investment management service shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

(e) The board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager and shall enforce full compliance with the requirements of the board.

(f) If the board contracts for and receives professional advisory services or professional investment management services, the board has no greater liability under the terms of this section than otherwise provided for under the Government Code or the Texas Trust Code.

(g) No investment manager, other than a bank that has a contract with the board to provide assistance in making investments, shall be the custodian or master trustee of any of the securities or other assets of the fund. Pursuant to Section 4.06 of this article, the board may designate a bank to serve as custodian or master trustee, or subcustodian or submaster trustee, to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. As the demands of the pension system require, the board shall withdraw from the custodian or master trustee money previously considered surplus in excess of current cash and proceeds from the sale of investments. The money may without distinction be used for the payment of benefits pursuant to each of the plans within the pension system and for other uses authorized by this article and approved by the board.

Sec. 4.08. ACTUARIAL VALUATION. (a) The board has the authority to employ a qualified actuary to provide a continuing observation of the operation of the pension system

and to make recommendations and give advice to the board about the condition of the assets of the fund and the administration of the pension system. A qualified actuary shall receive such compensation as is determined by the board in accordance with Section 4.01 of this article.

(b) A qualified actuary shall perform continuing actuarial observation of the assets of the fund not less than once every two years and make a report of the condition of the assets of the fund to the board. The board may require more frequent reports.

Sec. 4.09. REWARDS, DONATIONS, AND CONTRIBUTIONS. Any reward, donation, or contribution given to any member as payment or gratuity for service performed in the line of duty shall be turned over to the chief of the member's department, who shall, in turn, forward the reward, donation, or contribution to the administrator of the pension system for deposit in the fund.

PART 5. MEMBERSHIP

Sec. 5.01. MEMBERSHIP IN COMBINED PENSION PLAN. (a) The membership of the combined pension plan is composed of the following persons:

(1) Group A members:

(A) police officers or fire fighters who are on active service and who as of February 28, 1973, had filed a written statement with the pension system of their desire to participate in either the old plan or Plan A;

(B) police officers and fire fighters who are on active service, who were employed and receiving compensation from the city as a police officer or a fire fighter before March 1, 1973, and who made contributions to either the old plan or Plan A attributable to any period of employment before March 1, 1973; and

(C) except as provided by Subsection (b) of this section, persons who elect to become Group A members under that subsection; and

(2) Group B members:

(A) police officers and fire fighters who are on active service, were formerly members of either the old plan or Plan A, and as of April 30, 1973, had filed a written statement with the pension system of their desire to participate in Plan B;

(B) police officers and fire fighters who are on active service and who on or after March 1, 1973, and before January 1, 1993, became members of Plan B;

(C) as a condition of employment, any police officer or fire fighter who is initially employed as a police officer or a fire fighter by the city on or after January 1, 1993;

(D) as a condition of return to active service and except as provided by Subsection (b) of this section, former members of the old plan or Plan A who left active service before March 1, 1973;

(E) as a condition of return to active service and except as provided by Subsection (c) of this section, former Group B members, whether or not the persons were ever a member of the old plan, Plan A, or the combined pension plan;

(F) Group A members who are on active service and meet the requirements and make an election under Subsection (d) of this section; and

(G) persons who are on active service and make an election under Subsection (e) of this section.

(b) A person who has received an old plan, Plan A, or combined pension plan retirement or disability pension on or after March 1, 1973, may, if the person returns to active service, elect to participate as a Group A or Group B member by filing a written application for membership with the administrator not later than 60 days after the date of return to active service. As a condition of either Group A or Group B membership, the board may require the person to undergo a physical examination and be certified by the health director as being capable of performing the duties to which the person will be assigned. If the person does not elect to become a Group A or Group B member, the person shall on leaving active service receive a retirement pension in an amount that is unadjusted for the period of return to active service if the person meets all of the requirements of Group A membership.

(c) A Group B pensioner who was never a member of the old plan, Plan A, or the combined pension plan before January 1, 1993, may, if the person returns to active service, elect to become a Group B member by filing a written application for membership with the administrator not later than 60 days after the date of return to active service. As a condition of Group B membership, the board may require the pensioner to undergo a physical examination and be certified by the health director as being capable of performing the duties to which the person will be assigned. If the person does not elect to again become a Group B member, on leaving active service, if the person meets all applicable requirements of this article, the person shall receive benefits in an amount equal to the amount the person was receiving as of the day before the day the person returned to active service, and the person's base pension shall be the same as the base pension originally computed before the return to active service.

(d) A person who is on active service and is a Group A member may irrevocably elect to become a Group B member by filing a written application with the administrator. On and after the filing of the application, the Group A member shall make contributions to the fund at the rate applicable to Group B members. However, the contributions do not, by themselves, constitute Group B membership. Group B membership is contingent on the satisfaction of the following conditions:

(1) The person must pay an amount to the fund equal to the difference between the contributions the person would have made to the fund had the person been a Group B member for the entire period the person could otherwise have been a Group B member before making application for membership and the contributions the person actually made during that period, plus interest calculated in accordance with procedures adopted by the board from time to time.

(2) The payments described by this subsection must be completed before the date on which the person leaves active service in accordance with procedures adopted by the board from time to time. If the fund does not receive payment by that date, all payments of this type, as well as those amounts paid by the person after the person's application for Group B membership that are in excess of the Group A member contribution rate, shall be returned to the person, or in the event of the person's death to the person's surviving spouse, children, or estate, as applicable.

(e) A person who is on active service and has never been a member of any plan within the pension system may elect to become a Group B member on a prospective basis by filing a written application for membership with the administrator.

Sec. 5.02. EFFECTIVE DATE OF GROUP B MEMBERSHIP. (a) The effective date of Group B membership for persons described by Section 5.01(a)(2)(A) or (B) of this article is January 1, 1993.

(b) The effective date of Group B membership for a person who becomes a Group B member pursuant to Section 5.01(a)(2)(C) of this article is the day the person begins active service.

(c) The effective date of Group B membership for a person who becomes a Group B member and is described by Section 5.01(a)(2)(D) of this article is the date of the person's return to active service.

(d) The effective date of Group B membership for a former Group B member who again becomes a Group B member and is described by Section 5.01(a)(2)(E) of this article is the person's original effective date of Group B membership, adjusted for any period that the person was not on active service, if the person has not withdrawn all contributions to the fund pursuant to Section 4.04 of this article. If, however, the former Group B member has withdrawn all contributions to the fund in accordance with Section 4.04 of this article, and the person does not replace the previously withdrawn contributions together with interest as provided by Section 4.04(h) of this article, the effective date of the person's membership is the date of return to active service.

(e) The effective date of membership for a person who becomes a Group B member pursuant to Section 5.01(b) of this article is the date written application for membership is filed with the administrator. The effective date of membership for a person who becomes a Group A member pursuant to Section 5.01(b) of this article is the person's original effective

date of membership in the old plan, Plan A, or the combined pension plan, whichever is applicable.

(f) The effective date of Group B membership for a Group B pensioner who again becomes a Group B member pursuant to Section 5.01(c) of this article is the pensioner's original effective date of membership, adjusted for any period the person was not on active service.

(g) The effective date of Group B membership for a person who joins this plan pursuant to Section 5.01(d) of this article is March 1, 1973.

(h) A person described by Subsection (a), (c), (d), (e), (f), or (g) of this section shall be given full pension service for the time the person was a contributing member of the old plan, Plan A, the combined pension plan, and Plan B, and the pension service shall be counted as if it had been earned while a Group B member. Neither the length of time persons described by Subsection (a), (c), (d), (e), (f), or (g) of this section received a retirement or disability pension, whether under the old plan, Plan A, the combined pension plan or Plan B, nor the amount of any benefits paid to the person shall have any effect on the pension service earned by the person. No pension service may be earned while on service retirement or disability retirement, or when the person was not on active service. Except as provided by Sections 5.02 and 5.09 of this article, a person described by Subsection (a), (c), (d), (e), (f), or (g) of this section may not be allowed to contribute to the fund in order to receive pension service for the time the person was not on active service, regardless of whether the person was actually receiving a pension.

(i) The effective date of Group B membership for a person who becomes a Group B member pursuant to Section 5.01(e) of this article is the date on which written application for Group B membership is filed with the administrator.

Sec. 5.03. TERMINATION OF GROUP B MEMBERSHIP. (a) Group B membership, whether by voluntary application or as a condition of employment, may be terminated by the Group B member only when the person ceases to be on active service.

(b) Once a police officer or fire fighter becomes a Group B member, whether by voluntary application or as a condition of employment, the person may never transfer the membership to become a Group A member and may never transfer the membership to any pension plan for police officers and fire fighters that may be created in the future unless the terms of that plan allow the transfer.

(c) A Group B member or former Group B member who also was a former contributing member of either the old plan or Plan A may elect, when applying for either a retirement or disability pension if applicable, to terminate membership and receive a Group A retirement or disability pension under the applicable provisions of this article, if the Group B member's application for retirement or disability pension is granted by the board.

(d) If a Group B member or former Group B member described by Subsection (c) of this section has elected and been granted a Group A retirement or disability pension under the applicable provisions of this article, the person is entitled to a reimbursement from the fund. The reimbursement shall be equal to that portion of the person's contributions to the fund, without interest, from the person's effective date of Group B membership until the time the person left active service, that is in excess of the total amount the person would have contributed as a Group A member or as a member of the old plan or Plan A for the same period. A Group B member or former Group B member desiring a refund of excess contributions must make written application for the refund with the administrator within three years after the date the person's Group A retirement or disability pension begins or lose all right, title, interest, or claim to the refund until such time as the board grants the refund in response to the person's written request. The refund shall be made as soon as practicable after written application is filed with the administrator.

Sec. 5.04. GROUP B MEMBERSHIP MAY BE DECLARED INACTIVE. (a) If a Group B member with less than five years of pension service either voluntarily or involuntarily leaves active service, the person's Group B membership remains active as long as the person has not withdrawn the person's contributions pursuant to Section 4.04 of this article.

(b) If a Group B member with five or more years of pension service either voluntarily or involuntarily leaves active service, the person's Group B membership remains active as long

as the person has not withdrawn the person's entire contributions pursuant to Section 4.04 of this article.

(c) If the board receives valid information that a Group B primary party has died, leaving one or more heirs, the board shall attempt to notify the heirs of the procedures for applying and qualifying for survivor benefits or a refund of the Group B primary party's contributions, if applicable.

(d)(1) Subject to the provisions of Subdivision (5)(A) of this subsection, the membership of a Group B member described by Subsection (a) of this section shall be declared inactive and all of the person's accrued pension service voided if the person does not return to active service within three years after receiving the notice described by Subdivision (4) of this subsection.

(2) Subject to the provisions of Subdivision (5)(B) of this subsection, the membership of a Group B member described by Subsection (b) of this section shall be declared inactive and all of the person's accrued pension service voided if the person does not file an application for a Group B retirement pension with the board within three years after receiving the notice described by Subdivision (4) of this subsection.

(3) Subject to the provisions of Subdivision (5)(C) of this subsection, the heirs or estate of a deceased primary party described by Subsection (c) of this section have no right, title, interest, or claim for benefits or a refund of the primary party's contributions to the fund, if the heirs or the estate, whichever is applicable, fails to file an application for the primary party's benefits or contributions within three years of receiving the notice described by Subdivision (4) of this subsection.

(4) On the 50th anniversary of the birth of a Group B member described by Subsection (a) or (b) of this section or on the board's receipt of notice of the death of a primary party described by Subsection (c) of this section, the board shall, by registered or certified mail, return receipt requested, attempt to notify the Group B member or the heirs or estate of a primary party, whichever is applicable, of the status of their entitlement to benefits or contributions from the fund.

(5)(A) A Group B member described by Subdivision (1) of this subsection shall have the person's Group B membership and pension service reinstated on the person's return to active service.

(B) A Group B member described by Subdivision (2) of this subsection shall have the person's Group B membership and pension service reinstated on the person's return to active service or on the grant of the person's written request to the board of the person's desire to apply for a Group B service retirement benefit.

(C) The heirs or estate of a primary party described by Subdivision (3) of this subsection shall have their right, title, interest, or claim to the primary party's refund of contributions reinstated on the board's grant of their written request for the reinstatement and refund. The board's decision shall be based on a uniform and nondiscriminatory policy that it shall, from time to time, adopt.

Sec. 5.05. PENSION SERVICE. (a) A member shall receive pension service for the time, computed in years and fractional years for months and days, completed as a member of the combined pension plan, the old plan, Plan A, or Plan B.

(b) A member who elects to pay contributions for time spent on military leave, authorized leave of absence, or for an apprenticeship or probationary period, or for any other reason provided for by this article may not receive any pension service for any part of the time for which the member is contributing until the entire amount due the fund for the entire period involved has been paid as if the service were performed as a member.

(c) If a member, either voluntarily or involuntarily, leaves active service and later returns to active service, the person shall receive full pension service for the period of the person's original membership, if the person did not withdraw the person's contributions pursuant to Section 4.04 of this article. If, however, the member had withdrawn the person's contributions and does not replace the previously withdrawn contributions with interest as required by Section 4.04 of this article, the person forfeits any pension service accrued while a member before the date of the person's return to active service.

Sec. 5.06. VESTED RIGHTS OF GROUP B MEMBERS. (a) If a Group B member accrues five years of pension service, whether the pension service is accrued while a Group B member or while a member of the old plan, Plan B, Plan A, the combined pension plan, or a combination of plans, the Group B member has vested rights and is eligible to apply for a retirement pension in accordance with Section 6.02 of this article.

(b) If a Group B member has vested rights as determined under Subsection (a) of this section, and the Group B member either voluntarily or involuntarily leaves active service before becoming eligible to receive any benefits under Section 6.02 of this article, the person shall be provided with a letter approved by the board and signed by the administrator that, barring clerical error, miscalculation, or other error, is incontestable and shall state:

(1) the total amount of pension service the Group B member had accrued until the date the person left active service;

(2) the total amount of contributions the Group B member made under the terms of Plan B and the combined pension plan; and

(3) the monthly retirement pension due the Group B member at age 50.

Sec. 5.07. PURCHASE OF PENSION SERVICE BY GROUP B MEMBERS. (a) A Group B member who has previously elected not to become a contributing member of the old plan and Plan A may purchase pension service from the fund for that period during which the member performed active service with either department until the effective date of the member's Group B membership. No pension service may be given to the Group B member until payment is made for the entire period described by this subsection, and no pension service may be purchased for any period that is of greater or lesser length.

(b) Payment for the purchase of pension service under this section shall be equal to the amount of contributions the Group B member would have made to the old plan and Plan A had the member been a contributing member of either of the plans during the period described by Subsection (a) of this section, plus interest calculated in accordance with procedures adopted by the board from time to time.

(c) A Group B member may repay the fund all employee contributions withdrawn by an alternate payee pursuant to the terms of a qualified domestic relations order and receive pension service as a Group B member attributable to the contributions, if the Group B member repays completely to the fund the withdrawn contributions with interest, calculated at the interest rate from time to time used in the pension system's actuarial assumptions, compounded annually, on the contributions for the period from the date the contributions were withdrawn until the date the principal and accrued interest are repaid in full.

(d) No pension service may be given to a Group B member under Subsection (b) or (c) of this section until the entire amount described by Subsection (b) or (c) has been paid to the fund. If payment of the entire amount is not completed by the date the Group B member leaves active service, all partial payments shall be returned to the Group B member or, if the Group B member has died, to the member's heirs or estate, whichever is applicable.

Sec. 5.08. MEMBERS IN ARMED SERVICES. (a) A member may receive pension service for time spent away from either department while on active duty in any of the military services of the United States, including service in any state or National Guard or any reserve component of any military service in accordance with the military leave provided by this section.

(b) Any member inducted into the armed forces as a draftee must reapply for reinstatement with the member's prior department within 90 days after the date of honorable discharge or separation from military service. On such reinstatement, the member may elect to repay the member's contributions at any time under the procedure described by Subsection (h) of this section.

(c) Any member enlisting in the armed forces, other than as a reservist, whose military service between June 24, 1948, and August 1, 1961, did not exceed four years, or whose military service began after August 1, 1961, and did not exceed five years if the fifth year is at the request and convenience of the federal government, and who was honorably discharged or separated from service is guaranteed, under the provisions of coverage described by this subsection, the right to restore pension service under the procedure described by Subsection (h) of this section. The four- and five-year leaves permitted by this subsection apply to all of

a member's employment with the city. An enlistment plus any number of reenlistments may not exceed the four- or five-year limitations stated above.

(d) Any member ordered to an initial period of active duty for training in a reserve component of not less than 12 consecutive weeks is entitled to restore pension service for the period absent from the member's department, if the member returns to the member's department within 31 days after the date of honorable discharge or separation from duty in the reserve unit.

(e) Any member serving in a reserve component, voluntarily or involuntarily, may remain on military leave for four years, which may be extended for periods when the President of the United States calls the reserve unit into active duty. The service extension for members joining a reserve unit voluntarily is available only when the additional service is at the request and for the convenience of the federal government. Any member returning to the member's department under this provision must report back to work within the time specified to the member by the department, giving due regard for travel time and hospitalization, if required. Any inquiry into the validity of orders extending terms of reservist active duty for training will be referred to the Department of Labor's Office of Veterans' Employment and Training.

(f) Any member on military leave for short periods of authorized training, such as two-week encampments, are treated as on leave with pay for up to 15 working days in any one calendar year, during which time pension service automatically accrues. Leave in excess of 15 days will be treated as described by Subsection (e) of this section.

(g) With the exception of those circumstances described by Subsection (f) of this section, the city is not required to match contributions made by members under the terms of this section.

(h) Repayment shall be made in accordance with the procedure set forth in any uniform and nondiscriminatory military leave and payment procedure adopted by the board and in effect from time to time.

Sec. 5.09. NONMILITARY LEAVE OF ABSENCE. (a) An authorized leave of absence means any leave of absence that meets the following conditions:

(1) the leave of absence must be an official leave authorized by the chief of either department; and

(2) the leave of absence must be for the purpose of benefitting the department.

(b) A member may receive pension service for time spent away from either department on an authorized nonmilitary leave of absence. To receive pension service for a nonmilitary leave of absence, the following conditions must be met:

(1) before the date the member's leave of absence is to begin, the member must file with the administrator a written application to pay any contributions that will accrue during the member's leave as set forth in Subdivisions (2) and (3) of this subsection;

(2) the member must agree to pay into the fund the amount the member would have contributed had the member remained on active service, the amount to be based on the computation pay the member would have normally received had there been no change in the member's position during the period of leave;

(3) the member must agree to pay into the fund an amount equal to the amount the city would have contributed computed on the basis of total wages and salary the member would normally have received had the member remained on active service and had there been no change in the member's position during the period of leave, the payment to represent the total amount that would have been contributed by the city on the member's behalf had the member remained on active service and paid in addition to the amount the member must contribute as set forth in Subdivision (2) of this subsection;

(4) if the city's contribution rate changes as provided by Section 4.02 of this article, the percentage of total wages and salary required to be paid by the member also changes, so that the amount paid by the member in accordance with this section always equals the amount that would have been contributed by the city on the member's behalf had the member remained on active service, and in no event is the city required to pay into the fund any contributions that would have been made on behalf of a member had the member remained on active service during the period of an authorized leave of absence;

(5) payment of contributions as set forth in Subdivisions (3) and (4) of this subsection shall begin coincident with the beginning of the applicable leave of absence and shall be made monthly to the administrator for deposit in the fund, unless the board authorizes the deferment of the payments until the member has returned to active service; no pension service will be granted to the member until the member returns to active service, and if the member does not return to active service, the contributions paid will be returned to the member except as provided by Subsection (c) of this section; if the board authorizes the deferment of the payments, the payment may be made either by authorizing the deduction of pro rata portions of the total amount due from the member's salary over a one-year period, or by cash payment made to the administrator within one year after the date of the member's return to active service, except that the board may approve a longer period for making the payment if it finds that the one-year limit would work a financial hardship on the member;

(6) the member must return to active service within 90 days after the date the member's authorized leave expires, or if the member's authorized leave does not have a fixed expiration date, within a reasonable time to be determined by the board, or the member forfeits the right to pay for the leave time; and

(7) no member may ever be allowed to pay leave of absence contributions under this section for any time in excess of the time actually spent on an authorized leave of absence.

(c)(1) If a member of the combined pension plan is disabled or dies while on an authorized leave of absence, the member or the member's heirs are entitled to either a refund of contributions pursuant to Section 4.04 of this article or the member or the member's qualified survivors are entitled to benefits under the provisions of this article, to the extent applicable.

(2) A member who is disabled or dies while on leave of absence pursuant to this section may receive no pension service for any portion of the period of the leave; except that if the member had, before the disability or death, paid for contributions while on leave of absence in accordance with Subsection (a) of this section, the member shall receive pension service for the leave time actually paid for at the time of the member's disability or death, but the member may receive no pension service for any portion of the period of leave for which contributions have not been paid to the administrator for deposit in the fund.

PART 6. BENEFITS

Sec. 6.01. GROUP A RETIREMENT PENSION. (a) A Group A member or former Group A member must have 20 years of pension service to be eligible for a Group A retirement pension under this section. A member's application under this section, once made, is irrevocable. If a Group A pensioner returns to active service as a police officer or fire fighter with the city, the person's Group A retirement pension ceases until the time that the person again leaves active service with the city.

(b) At age 50 a Group A member or former Group A member is eligible to begin drawing a monthly Group A retirement pension. A monthly Group A retirement pension equals 50 percent of the base pay per month, plus 50 percent of any longevity pay the Group A member was receiving at the time the member left active service. Although the number of years used in the computation of longevity pay remains fixed at the time a Group A member or former Group A member leaves active service, the monthly rate of longevity pay used in this computation is subject to change in the event of an amendment to the state law governing longevity pay. The monthly Group A retirement pension benefits of Group A pensioners shall be adjusted from time to time in a like manner.

(c) In addition to the amount computed under Subsection (b) of this section, at age 50, a Group A member is eligible to begin drawing an annual Group A retirement pension. An annual retirement pension equals 50 percent of the difference between the annualized amount of city service incentive pay and longevity pay. In determining city service incentive pay and longevity pay for purposes of this element of the annual Group A retirement pension only the following apply:

(1) City service incentive pay is calculated in the same manner as the city service incentive pay is calculated for members currently on active service except:

(A) the annual salary of a Group A pensioner used in calculating city service incentive pay is determined on the basis of the last city civil service rank held by the Group A pensioner when the person was on active service; however, if the rank no longer exists, its closest equivalent shall be determined by the board and applied; and

(B) the annual salary of a Group A pensioner as determined under Paragraph (A) of this subdivision shall be that amount in effect on the last day of September of each year the Group A pensioner's annual retirement pension is calculated.

(2) Longevity pay shall be calculated as 12 times the amount of monthly longevity pay the Group A pensioner was receiving at the time such person left active service, except that the monthly rate of longevity pay used in this computation is subject to change if an amendment to state law governing longevity pay is enacted.

(d) The element of annual retirement pension computed under Subsection (c)(1) of this section is subject to the following limitations:

(1) it shall be prorated for the year in which the pensioner begins receiving a retirement pension;

(2) it shall be payable only to those Group A pensioners who as a Group A member on active service received city service incentive pay and who receive a monthly Group A retirement pension as determined under Subsection (b) of this section on the last day of September of each year; and

(3) it shall be paid to Group A pensioners as long as the city continues to pay city service incentive pay to Group A members on active service.

(4) Notwithstanding Subsections (b) and (c) of this section, a Group A member with a minimum of 20 years of pension service may apply for an actuarially reduced retirement pension to begin no earlier than when the member attains age 45 but before the member attains age 50. The Group A member or a former Group A member who has made an application may receive a retirement pension calculated under Subsections (b) and (c) of this section reduced by two-thirds of one percent per month for each whole calendar month the benefit is payable before the month in which the Group A member or former Group A member attains age 50.

(e) At age 55 a Group A member or former Group A member is eligible to begin drawing a monthly retirement pension computed as follows:

(1)(A) at the rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a maximum of 32 years of pension service, or 96 percent of base pay; or

(B) if the Group A member or former Group A member had 34 or more years of pension service as of April 30, 1990, at the rate calculated under the terms of the combined pension plan in effect on April 30, 1990, if greater than the amount calculated under Paragraph (A) of this subdivision; plus

(2) one-half of the longevity pay the Group A member or former Group A member was receiving at the time the person left active service; plus

(3) 1/24th, without subsequent adjustment, of the annualized amount of the city service incentive pay the Group A member or former Group A member received at the time the person left active service.

(f) Notwithstanding Subsection (e) of this section, Group A pensioners payments under Subsection (e)(3) of this section are contingent on the city's continuing payment of city service incentive pay to Group A members on active service. For purposes of this section, base pay and longevity pay are the amounts in effect on the date benefits are to begin, without subsequent adjustment.

(g) Notwithstanding Subsection (e) of this section, a Group A member or former Group A member with 20 or more years of pension service may apply for an actuarially reduced Group A retirement pension beginning on or after the date the Group A member or former Group A member attains age 50 but before the person attains age 55. The Group A member or former Group A member may receive a retirement pension calculated under Subsection (e) of this section reduced by two-thirds of one percent per month for each whole calendar month the

benefit is payable before the month in which the Group A member or former Group A member attains age 55.

(h) Entitlement to the Group A retirement pension described by this section is subject to the following conditions:

(1) written application must be filed with the administrator;

(2) the grant of a Group A retirement pension by the board must be made at a meeting of the board held during the month the Group A retirement pension is to become effective, or as soon after that as possible; and

(3) the Group A member must no longer be on active service.

Sec. 6.02. GROUP B RETIREMENT PENSION. (a) A Group B member or former Group B member who has accrued five or more years of pension service may make application for a Group B retirement pension on reaching 50 years of age, or for an actuarially reduced Group B retirement pension on reaching 45 years of age.

(b) A former Group B member or Group B pensioner who withdrew any of the person's Plan B or Group B contributions and who on again becoming a Group B member does not replace such previously withdrawn contributions with interest thereon as provided by Section 4.04 of this article must earn at least five years of pension service after the time the person returns to active service to be eligible for a Group B retirement pension.

(c) Entitlement to a Group B retirement pension as described by Subsection (a) or (b) of this section is subject to the following conditions:

(1) written application must be filed with the administrator;

(2) the grant of the Group B retirement pension by the board must be made at a meeting of the board held during the month the Group B retirement pension is to become effective, or as soon after that as possible; and

(3) the Group B member may no longer be on active service.

(d) A Group B retirement pension shall be computed at the rate of three percent of the average computation pay determined over the 60 consecutive months in which the Group B member received the highest computation pay, multiplied by the number of years, prorated for fractional years, of pension service to a maximum of 32 years of pension service or 96 percent of the computation pay as determined under this subsection.

(e) However, a Group B member or former Group B member with 34 or more years of pension service as of April 30, 1990, shall receive the greater of a Group B retirement pension calculated under the terms of Plan B as in effect on that date or a Group B retirement pension calculated pursuant to Subsection (d) of this section.

(f) A Group B member, or any former Group B member who was a Group B member as of any date after April 30, 1990, may apply for an actuarially reduced Group B retirement pension beginning no earlier than the person's 45th birthday but before the person's 50th birthday. A Group B member or former Group B member who applies for an actuarially reduced Group B retirement pension beginning on or after the person's 45th birthday shall receive a pension calculated under Subsection (d) of this section, reduced by two-thirds of one percent per month for each whole calendar month the pension would be payable before the month in which the Group B member or former Group B member attains age 50.

(g) In no event may any Group B member or former Group B member who was at any time a Group A member or a contributing member of the old plan or Plan A and who satisfied the applicable length-of-service requirements of the applicable plan receive a retirement pension in an amount less than the amount the person would be entitled to receive as a Group A member.

(h) A former Group B member who was not a Group B member on or after May 1, 1990, shall receive a retirement pension calculated under the applicable provisions of this plan as in effect on the date the person left active service.

(i) A former Group B member who was not a Group B member after April 30, 1990, may request an actuarially reduced retirement pension beginning no earlier than the person's 45th birthday but before the person's 50th birthday. A former Group B member described by this subsection shall receive a retirement pension under the applicable provisions of Plan B as in

effect on the date the person left active service, reduced by two-thirds of one percent per month for each whole calendar month the pension would be payable before the month in which the former Group B member attains age 50.

Sec. 6.03. **DISABILITY BENEFITS.** (a) If a member becomes disabled to the extent that the member cannot perform the member's duties with the member's department, the member may apply for a disability pension, in accordance with any uniform and nondiscriminatory disability application procedure adopted by the board and in effect from time to time.

(b) No disability pension may be paid until a member has been prevented, by a disability, from performing the member's duties with the member's department for a period of at least 90 consecutive calendar days, and no disability benefits may be paid for any portion of the 90-day period. The board may waive the waiting period on request by the member, if the request is supported by credible evidence acceptable to the board that the disability is wholly and immediately incapacitating. The board may request from the city such information, including any employment application and any related physical test and medical examination records, as may be desirable in evaluating the disability application.

(c) No disability pension may be paid for any disability if the disability was a result of the member's commission of a felony, except that this restriction may be waived by the board if it believes that facts exist that would mitigate the denial of the member's application for a disability pension.

(d) No disability pension may be paid to a member for any disability if the disability was a result of an intentionally self-inflicted injury or a chronic illness resulting from an addiction by the member through a protracted course of noncoerced indulgence in alcohol, narcotics, or other substance abuse.

(e) No disability pension may be paid until the health director has either examined the member or reviewed reports of the member's physical or mental condition submitted to the health director by competent outside medical practitioners.

(f) No disability pension may be paid if the chief of the member's department is able to provide the member with duties that are within the member's physical or mental capabilities, as long as the board agrees that the duties are within the member's capabilities, even though the duties are different from the duties the member performed before the disability.

(g) Written application for a disability pension must be filed with the administrator. The application must be accompanied by a recommendation from the health director. This recommendation shall contain a statement indicating whether the member became disabled while the member was on duty or off duty and whether the disability was service-connected or nonservice-connected.

(h) The recommendation from the health director shall also contain a statement indicating the date the member became disabled or indicating that the disability prevented the member from performing the member's duties for a period of not less than 90 days.

(i) An application for disability retirement will be considered at the meeting of the board held during the month the disability pension is to become effective or as soon after the effective date of the disability pension as possible. No disability pension may be paid, however, until the board has approved the application.

(j) If a person who became a Group B member pursuant to Section 5.01(a)(2)(E) of this article withdraws the person's contributions pursuant to Section 4.04 of this article and leaves active service with vested rights in the old plan, Plan A, or the combined pension plan in existence before January 1, 1993, the Group B member must, on return to active service, earn five years of pension service after the date of return to receive a Group B disability pension. If the Group B member is disabled before earning five years of pension service following a return to active service, the person may receive only a Group A disability pension.

Sec. 6.04. **CALCULATION OF GROUP A DISABILITY PENSION.** (a) If a Group A member's application for a Group A disability pension has been approved by the board pursuant to Section 6.03 of this article, including any procedures adopted under that section, the Group A member may elect to receive a Group A disability pension calculated in the same manner as the benefit under Sections 6.01(b) and (c) of this article or under Subsection (b) of this section. An election under this section, once made, is irrevocable.

(b) When a Group A member elects to accept a Group A disability pension under this section, it shall be calculated as provided by Subsections (c), (d), and (e) of this section.

(c) If a Group A member's disability results during the performance of duties with either department, the member is entitled to a monthly disability pension calculated as follows:

(1) at a rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a minimum of 20 years of pension service being deemed credited and a maximum of 32 years of pension service being credited, or 96 percent of base pay or, if the Group A member had 34 or more years of pension service as of May 1, 1990, the member shall receive the greater of a disability pension calculated under the terms of the combined pension plan in effect on that date or as calculated under this subdivision; plus

(2) one-half of the longevity pay the Group A member was receiving at the time the member left active service; plus

(3) 1/24th, without subsequent adjustment, of the annualized amount of city service incentive pay the Group A member received at the time the member left active service.

(d) Notwithstanding Subsection (c) of this section, the amount of a disability retirement benefit of a Group A pensioner who is on disability retirement under Subsection (c)(3) of this section is contingent on the city's continuing payment of city service incentive pay to Group A members on active service. For purposes of this subsection, base pay and longevity pay are the amounts in effect on the date the benefits are to begin, without subsequent adjustment.

(e) If a Group A member's disability does not result during the performance of the member's duties with either department, the member is entitled to a monthly disability pension calculated:

(1) at a rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a maximum of 32 years of pension service, or 96 percent of base pay, except that if the Group A member had 34 or more years of pension service as of April 30, 1990, the member shall receive the greater of a disability pension calculated under the combined pension plan in effect on that date or as calculated under this subdivision; plus

(2) one-half of the longevity pay the Group A member was receiving at the time the member left active service; plus

(3) 1/24th of the annualized amount of city service incentive pay the Group A member received at the time the member left active service, without regard to any subsequent adjustment.

(f) Payments of the amounts described by Subsection (e)(3) of this section are contingent on the city's continuing payment of city service incentive pay to Group A members on active service.

(g) For purposes of Subsection (e)(3) of this section, base pay and longevity pay are the amounts in effect on the date the benefits are to begin, without subsequent adjustment.

Sec. 6.05. CALCULATION OF GROUP B DISABILITY BENEFITS. (a) If a Group B member's application for a Group B disability pension has been approved by the board pursuant to Section 6.03 of this article, including any procedures adopted under that section, the Group B member may, depending on the circumstances, elect to receive a Group B disability pension calculated in the manner described by Subsection (b) or (c) of this section.

(b) If a Group B member becomes disabled during the performance of the member's duties with either department, the member is entitled to a monthly disability pension calculated at a rate of three percent of the average computation pay determined over the 60 consecutive months in which the Group B member received the member's highest computation pay multiplied by the number of years, prorated for fractional years, of the member's pension service with a minimum of 20 years of pension service being deemed credited, or 60 percent of average computation pay determined over the 60 consecutive months in which the Group B member received the member's highest computation pay, except that if the Group B member has less than five years of pension service, the Group B member's average computation pay will be computed based on the member's entire pension service. If a Group B member had 34 or more years of pension service as of April 30, 1990, the Group B member is entitled to receive the greater of a Group B disability pension calculated under the terms of Plan B in effect on that date or calculated pursuant to this subsection.

(c) The Group B disability pension for any Group B member whose disability does not result during the performance of the member's duties with either department shall be computed at a rate of three percent of the average computation pay determined over the 60 consecutive months in which the Group B member received the member's highest computation pay multiplied by the number of years, prorated for fractional years, of the member's pension service, except that any partial year of pension service for the first 20 years of pension service shall be counted as a full year of pension service. If the Group B member has less than five years of pension service, the Group B member's average computation pay will be computed based on the member's entire pension service, and if a Group B member had 34 or more years of pension service as of April 30, 1990, the Group B member is entitled to receive the greater of a disability pension calculated under the terms of Plan B in effect on that date or calculated pursuant to this subsection.

(d) The board shall require any Group B pensioner who became a member of Plan B or the combined pension plan on or after May 1, 1990, and who is receiving a Group B disability pension in accordance with Subsection (b) or (c) of this section to provide the board annually, on or before May 1 of each year, with a true and complete copy of those portions of the person's federal and, if applicable, state tax return, including appropriate schedules, for the previous calendar year that indicate the person's occupations and earned income for the previous calendar year. However, the board may waive the May 1 date in lieu of one later in the same calendar year if the Group B pensioner provides the board with a true and complete copy of a grant of an extension of time for the filing of the person's tax return from the appropriate governmental agency or a true and complete copy of an extension request that results in any automatic extension. If the Group B pensioner is or has been receiving earned income from one or more employments, including self-employment, during the preceding year, the board shall reduce future disability pension payments to the Group B pensioner in accordance with the following formula: \$1 for each \$1 that the sum of "a" + "b" is greater than "c," where "a" is the earned income of the Group B pensioner attributable to the previous calendar year from the person's employments, "b" is the total amount of Group B disability pension received by the Group B pensioner the previous calendar year, and "c" is the annualized amount of the average computation pay the Group B pensioner received as of the date the person left active service. For purposes of this computation, the average computation pay shall be deemed increased at a rate of four percent simple interest, without compounding during the year, as of each January 1 that the Group B pensioner receives a Group B disability pension.

(e) For purposes of Subsection (d) of this section, the phrase "earned income" means income earned by a Group B pensioner in the form of wages, salaries, commissions, fees, tips, unemployment benefits, and other amounts received by virtue of employment or self-employment but paid before any deduction for taxes or insurance. In addition, earned income also includes those amounts contributed on a before-tax basis to any retirement plan or employee health and welfare benefit plan.

Sec. 6.06. GENERAL RULES GOVERNING DEATH BENEFITS. (a) Any award of a death benefit is subject to the conditions required by this section.

(b) A written application for benefits must be filed with the administrator.

(c) The application will be considered at the meeting of the board held during the month death benefits are to become effective, or as soon as possible after the date the benefits become effective. No benefits may be paid, however, until the board has approved the application.

(d) The board may require the applicant to provide proof of eligibility, such as marriage licenses, birth certificates, adoption papers, or sworn statements. The board may withhold any death benefit until the eligibility of the applicant has been confirmed.

(e) If the qualified surviving children are not entitled to death benefits, the qualified surviving spouse is entitled only to receive a share of the death benefits in the amount calculated under Section 6.07(a) or (b) or Section 6.08(b)(1), (c)(1), (d)(1), or (e)(1) of this article, whichever is applicable; and is not entitled to what otherwise would be the qualified surviving children's share. If there is no qualifying surviving spouse, any qualified surviving children shall receive only the amount calculated under Section 6.07(a) or (b) or Section 6.08(b)(2), (c)(2), (d)(2), or (e)(2) of this article, whichever is applicable, and are not entitled to

what otherwise would be the qualified surviving spouse's share. If there is no qualified surviving spouse or qualified surviving children, any qualified dependent parent shall receive only the amount calculated under Section 6.07(c) or Section 6.08(b)(3), (d)(3), or (e)(3) of this article, whichever is applicable, and is not entitled to what otherwise would be the qualified surviving spouse's or qualified surviving children's share.

(f) The death benefit received by the qualified surviving spouse, qualified surviving children, or qualified dependent parent may not exceed the pension to which the deceased primary party was entitled per month.

(g) If there is no surviving spouse or legal guardian for the qualified surviving children and if the board determines that the qualified surviving children lack the discretion to handle money, or in other appropriate circumstances, notwithstanding any other provision of this section, the board may request a court of competent jurisdiction to appoint a suitable person to receive and administer the qualified surviving children's money or in those circumstances described in Subsection (n) of this section, appoint a new trustee to administer the qualified surviving children's support trust.

(h) With the exception of a support trust described in Subsection (n) of this section, no death benefits awarded to qualified surviving children may be used for any purpose other than to benefit the qualified surviving children. The board may withhold payment of benefits if it has reason to believe the benefits are not being properly applied.

(i) Death benefits paid to qualified surviving children living with a surviving spouse shall be delivered to the spouse, who is required to use the benefits on behalf of the qualified surviving children.

(j) With the exception of those circumstances described in Subsection (n) of this section, death benefits paid to qualified surviving children living with a person other than the surviving spouse shall be delivered to the person with whom the qualified surviving children are living, if the board has designated the person as being a suitable person to receive and administer the benefits. The board may, however, withhold payment of benefits to anyone but the legal guardian of the qualified surviving children and may require proof that a person has been appointed legal guardian of the qualified surviving children before authorizing any benefits to be delivered to that person.

(k) The qualified surviving dependent parents of a member are entitled to receive any survivor benefits provided by this article for the remainder of their lives.

(l) The board may require all persons receiving death benefits, including qualified surviving spouses, qualified surviving children or their guardians, and qualified surviving dependent parents, to file with the administrator, at least once every two years, a sworn statement concerning their eligibility to continue to receive death benefits. The board may also require a sworn statement from any person receiving death benefits at any time. The board may withhold death benefits from any person who fails or refuses to file a statement when requested to do so.

(m) When the last qualified survivor of any primary party becomes ineligible to continue to receive death benefits, that survivor shall be paid in a lump sum an amount equal to the difference, if any, between the total amount of all contributions made to the fund while a member, and the sum of all benefits paid to the primary party and all of his qualified survivors. The total amount to be paid in benefits to the primary party and all qualified survivors shall never be less than the total amount of contributions the primary party made to the fund while a member.

(n) Notwithstanding any other provision of this section, death benefits awarded to an unmarried qualified surviving child of a primary party who is determined by the board to be handicapped under the terms of Subsection (o) of this section may be paid to the trustee of a support trust established for the benefit of the qualified surviving child if:

(1) an opinion of counsel of the trustee of the support trust is furnished to the board indicating that payments made to the support trust will not, under existing law, be considered a resource of the qualified surviving child under Title 42, Section 1396(a)(17), of the United States Code or any successor statute, as well as applicable state law or regulations governing the situation;

(2) coincident with the furnishing of the opinion of counsel, the board is provided with an executed original of the support trust document for the records of the pension system;

(3) the terms of the trust provide that the board will receive an annual accounting of the support trust from its trustee, although the board has no legal responsibility to oversee the support trust; and

(4) the support trust will terminate as soon as practicable on the earlier occurrence of the following events:

(A) the date on which the qualified surviving child is determined by the board to no longer be handicapped under the terms of this section;

(B) the date on which the qualified surviving child is lawfully married;

(C) the date on which the qualified surviving child is deceased;

(D) the date on which the assets of the support trust are deemed to be the resources of the child under applicable federal or state laws or regulations; or

(E) unless otherwise excused by the board, the trustee of the support trust fails to provide the board with an annual accounting of the trust within six months after the close of the support trust's fiscal year.

(o) When a qualified surviving child who is entitled to receive death benefits under this article reaches the age of 19, the qualified surviving child may no longer participate in the division of the benefits, but the same undiminished qualified surviving child's share as determined by this section shall be paid to any remaining qualified surviving children under 19 years of age. However, a handicapped qualified surviving child may not be removed from participation in the division of benefits on reaching the age of 19 nor may the child be barred from original participation at any time after reaching the age of 19, and the payments shall continue for the duration of the handicap. If a qualified surviving child is not married and, after cessation of benefits (because of attainment of age 19) but before age 23, becomes handicapped, the child is entitled to participate in the division of death benefits under this article. Notwithstanding the preceding, all death benefits granted under this subsection are conditioned on the board finding that:

(1) the qualified surviving child is so physically or mentally handicapped, either congenitally or through injury suffered or disease contracted, as to be unable to be self-supporting or to secure and hold gainful employment or pursue an occupation;

(2) the qualified surviving child is not married;

(3) the handicap was not the result of an occupational injury for which the qualified surviving child received compensation equal to or greater than that provided under this article;

(4) the handicap was not the result of an intentional self-inflicted injury or a chronic illness itself resulting from an addiction of the qualified surviving child through a protracted course of noncoerced indulgence in alcohol, narcotics, or other substance abuse; and

(5) the handicap did not occur as a result of the qualified surviving child's participation in the commission of a felony.

(p) If a handicapped qualified surviving child received or is receiving compensation resulting from an occupational injury equal to an amount less than the death benefit to be provided under this section, the difference shall be paid out of the assets of the fund in the form otherwise payable as monthly benefits. For purposes of Subsection (o) of this section, if a lump sum is awarded for an injury, the fund's actuary may compute a corresponding monthly equivalent. A finding relating to a qualified surviving child's handicap is subject to review and modification by the board.

(q) On the death or marriage of a qualified surviving child granted death benefits under this article, the death benefits shall cease being paid to that child; however, the same undiminished qualified surviving child's share as determined by this section shall be uniformly distributed among any remaining unmarried qualified surviving children who are under 19 years of age and any unmarried qualified surviving children who are handicapped as described by Subsection (o) of this section.

(r) A spouse resulting from any marriage to a former member or pensioner after the date the member or pensioner leaves active service is not a qualified surviving spouse and is not entitled to death benefits under this article.

(s) To be eligible for death benefits under this article, qualified surviving children must be conceived, born, or legally adopted before the primary party leaves active service.

(t) A qualified surviving spouse who first remarried on or after April 21, 1988, is eligible to receive death benefits for the remainder of the qualified surviving spouse's life. This subsection may not be applied retroactively.

Sec. 6.07. GROUP A DEATH BENEFITS. (a)(1) If a Group A member dies before service retirement and before the Group A member has 20 years of pension service, leaving both a qualified surviving spouse and qualified surviving children, the qualified surviving spouse shall make an election for all survivors to receive a Group A death benefit consisting in the aggregate of an amount equal to a Group A retirement pension computed under the terms of Section 6.01 of this article as if the Group A member had completed 20 years of pension service. An election under this subdivision, once made, is irrevocable. This Group A death benefit shall be divided one-half to the qualified surviving spouse and one-half to the qualified surviving children.

(2) If a Group A pensioner dies during disability retirement and before the Group A pensioner had 20 years of pension service, leaving both a qualified surviving spouse and qualified children, the survivors in the aggregate shall receive a Group A death benefit calculated either under Sections 6.01(b) and (c) of this article if the Group A pensioner's Group A disability pension was calculated under Section 6.04(a) of this article, or under Section 6.01(e) of this article if the Group A pensioner's Group A disability pension was calculated under Section 6.04(b) of this article. This Group A death benefit shall be divided one-half to the qualified surviving spouse and one-half to the qualified surviving children.

(b)(1) If a Group A member or former Group A member dies before service retirement and after the Group A member or former Group A member has 20 years of pension service, leaving both a qualified surviving spouse and qualified surviving children, the qualified surviving spouse shall make an election for all survivors to receive a Group A death benefit of an amount equal to a Group A retirement pension the Group A member or former Group A member would have received had the person left active service on the date of death, computed under the terms of Section 6.01 of this article. An election under this subdivision, once made, is irrevocable. This Group A death benefit shall be divided one-half to the qualified surviving spouse and one-half to the qualified surviving children.

(2)(A) If a Group A pensioner dies leaving both a qualified surviving spouse and qualified surviving children, the qualified surviving spouse shall make an election for all survivors to receive a Group A death benefit in the amount of the Group A retirement pension being received by the Group A pensioner before the person's death. This Group A death benefit shall be divided one-half to the qualified surviving spouse and one-half to the qualified surviving children.

(B) With the exception of those circumstances described by Section 6.06(n) of this article, the Group A death benefits awarded to the qualified survivors under this subsection shall be paid entirely to the qualified surviving spouse and the qualified surviving children. The qualified surviving children's one-half share shall be equally and uniformly distributed by the qualified surviving spouse to them.

(c)(1) If a Group A member or former Group A member dies leaving no qualified surviving spouse or qualified surviving children but leaves surviving one or both qualified surviving dependent parents, the qualified surviving dependent parents may elect to receive a Group A death benefit equal to the Group A retirement pension the Group A member or former Group A member would have been entitled to under Section 6.01 of this article after leaving active service. If there are two qualified dependent parents, the election must be mutual. An election under this subdivision, once made, is irrevocable. The qualified surviving dependent parents of a Group A pensioner shall receive a Group A death benefit equal to the amount of the actual Group A retirement pension being received at the time of the pensioner's death, divided equally between the qualified surviving dependent parents.

(2) If a Group A pensioner dies during disability retirement and before the Group A pensioner had 20 years of pension service, leaving no qualified surviving spouse or qualified surviving children, but leaves surviving one or both qualified surviving dependent parents, the qualified surviving dependent parents may elect to receive a Group A death benefit calculated either: under Sections 6.01(b) and (c) of this article if the Group A pensioner's Group A disability pension was calculated under Section 6.04(a) of this article, or under Section 6.01(e) of this article if the Group A pensioner's Group A disability pension was calculated under Section 6.04(b) of this article. An election under this subdivision, once made, is irrevocable.

(d) If there is only one qualified surviving dependent parent, the parent is entitled to one-half of the amount determined under Subsection (c)(1) or (c)(2) of this section.

Sec. 6.08. GROUP B DEATH BENEFITS. (a) If a Group B member dies while on active service, a former Group B member who is vested under Section 5.06 of this article dies, or a Group B pensioner dies while on service or disability retirement, the person's qualified survivors, or the guardian of the qualified surviving children if no qualified surviving spouse exists, may make application for Group B death benefits. The qualified surviving spouse of a Group B member or former Group B member described by this subsection, the guardian of the qualified surviving children of the person if no qualified surviving spouse exists, or the qualified dependent parents if no qualified surviving spouse or qualified surviving children exist, have the option to select whether Group A or Group B death benefits are received, if the Group B member or former Group B member was eligible to receive either a Group A or Group B retirement pension. A qualified survivor who receives Group A death benefits under this subsection is entitled to a ratable portion of a reimbursement from the fund in the same amount and manner determined under Section 5.03(d) of this article. A qualified survivor or guardian desiring a refund of excess contributions must make application for the refund with the administrator within three years after the date the qualified survivor or guardian makes application for Group A death benefits. The option contained in this subsection is not available to qualified survivors of a Group B member or former Group B member who had, at the time of death, already applied for a retirement pension and selected a Group A retirement pension as provided by Section 5.03(c) of this article, but the qualified survivors are entitled to receive a Group A death benefit.

(b) Death benefits shall be computed as follows for the qualified survivors of Group B members who die while on active service:

(1) A qualified surviving spouse's Group B death benefit shall be computed at the rate of 1.5 percent of the Group B member's average computation pay determined over the 60 consecutive months in which the Group B member received the highest computation pay, for each year, and prorated for fractional years, of pension service with a minimum of 20 years of pension service assumed, or 30 percent of the average computation pay determined over the 60 consecutive months in which the member received the highest computation pay. The benefit may not exceed a computation for 32 years of pension service, or 48 percent of the average computation pay determined over the 60 consecutive months in which the Group B member received the highest computation pay. If the Group B member had less than five years of pension service, the average computation pay will be computed based on the person's entire pension service.

(2) A qualified surviving child's Group B death benefit shall be computed in the same manner as a qualified surviving spouse's benefit is computed under Subdivision (1) of this subsection and shall be divided equally among all of the qualified surviving children.

(3) Each qualified surviving dependent parent's Group B death benefit shall be computed in the same manner as a qualified surviving spouse's Group B benefit is computed under Subdivision (1) of this subsection.

(c) Group B death benefits shall be computed as follows for the qualified survivors of any former Group B member who died after leaving active service and who had vested rights under Section 5.06 of this article but who had not received Group B retirement benefits under Section 6.02 of this article at the time of death:

(1) The qualified surviving spouse of the former Group B member is entitled to a Group B death benefit equal to 50 percent of any Group B retirement pension the former Group B

member would have been entitled to under Section 6.02 of this article as of the date the former Group B member left active service.

(2) The qualified surviving children of the former Group B member are entitled to a Group B benefit calculated in the same manner as the Group B death benefit of a qualified surviving spouse, to be divided equally between the qualified surviving children.

(3) Each of the qualified surviving dependent parents of the former Group B member is entitled to a Group B death benefit equal to 50 percent of any Group B retirement pension the former Group B member would have been entitled to under the provisions of Section 6.02 of this article as of the date the former Group B member left active service.

(d) Group B death benefits shall be computed as follows for the qualified survivors of any Group B pensioner of this plan who dies while receiving a Group B retirement pension:

(1) The qualified surviving spouse of a Group B pensioner is entitled to Group B death benefits equal to 50 percent of any retirement pension the Group B pensioner was receiving at the time of death.

(2) The qualified surviving children of a Group B pensioner are entitled to a Group B death benefit calculated in the same manner as the Group B death benefit of a qualified surviving spouse, to be divided equally between the qualified surviving children.

(3) Each of the qualified surviving dependent parents of a Group B pensioner is entitled to a Group B death benefit equal to 50 percent of any retirement pension the Group B pensioner was receiving at the time of death.

(e) Group B death benefits shall be computed as follows for the qualified survivors of any Group B pensioner who dies while receiving a Group B disability pension due to either a service-connected or nonservice-connected disability:

(1) The qualified surviving spouse of the Group B pensioner is entitled to the greater of a Group B death benefit equal to 50 percent of any Group B disability pension the Group B pensioner would have been entitled to under Section 6.05 of this article as of the date the Group B pensioner left active service because of disability, or a Group B death benefit equal to 50 percent of any Group B disability pension the Group B pensioner was receiving at the time of death.

(2) The qualified surviving children of the Group B pensioner are entitled to a Group B death benefit calculated in the same manner as the Group B death benefit of a qualified surviving spouse, to be divided equally between the qualified surviving children.

(3) Each of the qualified surviving dependent parents of the Group B pensioner is entitled to the greater of a Group B death benefit equal to 50 percent of any disability pension the Group B pensioner would have been entitled to under Section 6.05 of this article as of the date the Group B pensioner left active service because of disability, or a Group B death benefit equal to 50 percent of any Group B disability pension the Group B pensioner was receiving at the time of death.

Sec. 6.09. QUALIFIED SURVIVING SPOUSE SPECIAL DEATH BENEFIT. (a) Notwithstanding Sections 6.06 and 6.07 of this article, the qualified surviving spouse of a Group A primary party is entitled to a special death benefit under this section if:

(1) the Group A primary party elected to receive a Group A retirement pension and later died, was receiving a disability or retirement pension either under the terms of Plan A before the original enactment of this article or elected to receive a Group A retirement pension under Sections 6.01(e), (f), and (g) of this article and later died, or was receiving a Group A disability pension under Section 6.04(c) of this article and later died;

(2) the Group A primary party (i) had at least 20 years of pension service and left active service after October 1, 1985, and was at least 55 years of age or older; or (ii) on or after May 1, 1990, the Group A primary party, after accruing at least 20 years of pension service, left active service and had a total of at least 80 credits, with each year of pension service, prorated for fractional years, equal to one credit and with each year of age, prorated for fractional years, equal to one credit; and

(3) the qualified surviving spouse has attained 55 years of age and there are no qualified surviving children eligible for death benefits.

(b) Until the requirements of Subsection (a) of this section are satisfied, a qualified surviving spouse shall receive a Group A death benefit in accordance with Section 6.07 of this article.

(c) The special Group A death benefit under this section is calculated based on the following formula:

$$(P \times P \times A) + (P \times C) + D, \text{ where}$$

A = base pay at the time the Group A primary party begins service retirement, dies, or becomes disabled, plus longevity pay, plus one-twelfth of last-received city service incentive pay;

B = Group A primary party's benefit calculated at the time the Group A primary party begins service retirement, dies, or becomes disabled;

P = B/A (expressed as a percentage or a decimal);

C = the number of adjustments made to a Group A primary party's Group A retirement pension or Group A disability pension under Section 6.04 of this article multiplied by the amount of the adjustments; and

D = the number of adjustments made to a qualified surviving spouse's Group A death benefit under Section 6.07 of this article multiplied by the amount of the adjustments.

(d) Notwithstanding Sections 6.03 and 6.05 of this article, a qualified surviving spouse of a Group B primary party who is entitled to any death benefits under Sections 6.06 or 6.08 of this article is also entitled to a special benefit under this section if:

(1) the Group B primary party elected to receive a Group B retirement pension and later died, or was receiving a Group B disability or retirement pension under this article and died;

(2) the Group B primary party:

(A) had at least 20 years of pension service, left active service after October 1, 1985, and was at least 55 years of age at the time of leaving active service; or

(B) on or after May 1, 1990, the Group B primary party left active service having a total of at least 80 credits, with each year of pension service, prorated for fractional years, equal to one credit and with each year of age, prorated for fractional years, equal to one credit; and

(3) the qualified surviving spouse has attained 55 years of age, and there are no qualified surviving children.

Until the requirements of Subsection (c) of this section are satisfied, a qualified surviving spouse may only receive a Group B death benefit in accordance with Sections 6.03 and 6.05 of this article.

(e) This special survivor benefit under this section is calculated based on the following formula:

$$(P \times P \times A) + (P \times C) + D, \text{ where}$$

A = average monthly computation pay at the time the Group B primary party begins service retirement, dies, or becomes disabled;

B = the Group B primary party's Group B retirement or Group B disability pension calculated at the time the Group B primary party begins service or disability retirement or dies;

P = B/A (expressed as a percentage or a decimal);

C = the number of postretirement adjustments made to a Group B primary party's Group B retirement pension or Group B disability pension under Section 6.05 of this article multiplied by the amount of the adjustments; and

D = the number of adjustments made to a qualified surviving spouse's Group B death benefit under Section 6.08 of this article multiplied by the amount of the adjustments.

Sec. 6.10A. MINIMUM BENEFITS TO GROUP A PRIMARY PARTIES WHO ELECT TO RECEIVE RETIREMENT PENSION UNDER SECTIONS 6.01(B) AND (C) AND THEIR QUALIFIED SURVIVORS. (a) Except as provided by Subsections (b) and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group A benefits provided by this section shall be paid to any Group A primary party who elects to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article or the primary party's qualified survivors. The benefits under this section shall be distributed in accordance with Sections 6.01(b) and (c), 6.04(a), or 6.07 of this article, as applicable, except that a Group A primary party who elects to receive an actuarially reduced Group A retirement pension because of the primary party's request to receive a Group A retirement pension before 50 years of age and the primary party's qualified survivors are not entitled to the Group A minimum benefits specified under this section. An alternate payee is not entitled to the Group A minimum benefits specified in this section.

(b) A Group A primary party who elects to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article and who left active service with 20 or more years of pension service is entitled to receive a minimum Group A retirement pension of \$1,500 a month. If the Group A primary party's Group A retirement pension is subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly benefits payable to the Group A primary party and the alternate payee is less than the actuarial equivalent of the minimum monthly Group A retirement pension described by this subsection, the Group A primary party's monthly Group A retirement pension will be increased so that the sum of the actuarial equivalents of the alternate payee's and the Group A primary party's monthly Group A retirement pension equals the actuarial equivalent of the minimum monthly Group A retirement pension calculated under this subsection.

(c) A qualified surviving spouse of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article will receive a minimum monthly Group A death benefit of \$750.

(d) A qualified surviving spouse of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article will receive, if there are qualified surviving children, a minimum Group A death benefit of \$750 a month. The qualified surviving children, as a group, will receive a minimum Group A death benefit of \$750 a month, to be divided equally among them.

(e) In the absence of a qualified surviving spouse of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the primary party's qualified surviving children, as a group, will receive a minimum Group A death benefit of \$750 a month, to be divided equally among them.

(f) In the absence of both a qualified surviving spouse and qualified surviving children of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, each qualified surviving dependent parent will receive a minimum Group A death benefit of \$750 a month. If only one of them is surviving, the qualified surviving dependent parent will receive a minimum Group A death benefit equal to \$750 a month.

(g) Notwithstanding the minimum monthly benefit described in other subsections of this section, a Group A primary party who receives a Group A disability pension under Section 6.04(a) of this article, calculated in the same manner as a Group A retirement pension under Sections 6.01(b) and (c) of this article, shall receive a minimum Group A disability pension equal to \$1,500 a month.

(h) If a Group A primary party's disability pension is subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly benefits payable to the Group A primary party and the alternate payee is less than the actuarial equivalent of the minimum monthly Group A disability pension determined under Subsection (g) of this section, the Group A primary party's minimum monthly Group A disability pension will be increased so that the sum of the actuarial equivalents of the alternate payee's and the Group A primary party's minimum monthly Group A disability pension equals the amount determined under Subsection (g) of this section.

(i) If a Group A pensioner who received a disability under Section 6.04(a) of this article, calculated in the same manner as a Group A retirement pension under Sections 6.01(b) and (c)

of this article before the completion of 20 years of pension service dies, the qualified survivors will receive a minimum Group A death benefit as provided under Subsection (c), (d), (e), or (f) of this section, as applicable, whichever is greatest.

Sec. 6.10B. MINIMUM BENEFITS TO GROUP A PRIMARY PARTIES WHO ELECT TO RECEIVE RETIREMENT PENSION UNDER SECTION 6.01(E) AND THEIR QUALIFIED SURVIVORS. (a) Except as provided by Subsections (b) and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group A benefits provided by this section shall be paid to any Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article or the primary party's qualified survivors. The benefits under this section shall be distributed in accordance with Section 6.01(e), 6.04(b), or 6.07 of this article, as applicable, except that a Group A primary party who elects to receive an actuarially reduced Group A retirement pension because of the primary party's request to receive a Group A retirement pension before 55 years of age and the primary party's qualified survivors are not entitled to the Group A minimum benefits specified under this section. An alternate payee is not entitled to the Group A minimum benefits specified in this section.

(b) A Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article and who left active service with 20 or more years of pension service is entitled to receive a minimum Group A retirement pension equal to the greater of (i) \$1,500 a month or (ii) \$1,000 a month adjusted in the manner described by Section 6.12(a) of this article. If the Group A primary party's Group A retirement pension is subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly benefits payable to the Group A primary party and the alternate payee is less than the actuarial equivalent of the minimum monthly Group A retirement pension described by this subsection, the Group A primary party's monthly Group A retirement pension will be increased so that the sum of the actuarial equivalents of the alternate payee's and the Group A primary party's monthly Group A retirement pension equals the actuarial equivalent of the minimum monthly Group A retirement pension calculated under this subsection.

(c) A qualified surviving spouse of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article will receive a minimum Group A death benefit equal to the greater of (i) \$750 a month or (ii) \$500 a month adjusted in the manner described by Section 6.12(a) of this article.

(d) A qualified surviving spouse of a Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, will receive, if there are qualified surviving children, a minimum Group A death benefit equal to the greater of (i) \$750 a month or (ii) \$500 a month adjusted in the manner described by Section 6.12(a) of this article. The qualified surviving children, as a group, will receive a minimum Group A death benefit equal to the greater of (iii) \$750 a month or (iv) \$500 a month adjusted in the manner described by Section 6.12(a) of this article, to be divided equally among them.

(e) In the absence of a qualified surviving spouse of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article, the qualified surviving children of a Group A primary party, as a group, will receive a minimum Group A death benefit equal to the greater of (i) \$750 a month or (ii) \$500 a month adjusted in the manner described by Section 6.12(a) of this article, to be divided equally among them.

(f) In the absence of both a qualified surviving spouse and qualified surviving children of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article, each qualified surviving dependent parent will receive a minimum Group A death benefit equal to the greater of (i) \$750 a month or (ii) \$500 a month adjusted in the manner described by Section 6.12(a) of this article. If only one of them is surviving, the qualified surviving dependent parent will receive a minimum Group A death benefit equal to the greater of (iii) \$750 a month or (iv) \$500 a month adjusted in the manner described by Section 6.12(a) of this article.

(g) Notwithstanding the minimum monthly benefit as described in other subsections of this section, a Group A primary party who leaves active service on a nonservice-connected disability under Section 6.04(b)(2) of this article with less than 20 years of pension service shall receive a minimum monthly Group A disability pension equal to the greater of (i) \$75 multiplied by the number of years of the primary party's pension service or (ii) \$50 multiplied

by the number of years of the primary party's pension service, the product adjusted in the manner described by Section 6.12(a) of this article.

(h) If the disability pension of a Group A primary party who leaves active service on disability retirement under Section 6.04(b) or (c) of this article is subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly benefits payable to the Group A primary party and the alternate payee is less than the actuarial equivalent of the monthly Group A disability pension determined under Subsection (g) of this section, the Group A primary party's monthly Group A disability pension will be increased so that the sum of the actuarial equivalents of the alternate payee's and the Group A primary party's monthly Group A disability pension equals the amount determined under Subsection (g) of this section.

(i) If a Group A pensioner who received a nonservice-connected disability under Section 6.04(b)(2) of this article before the completion of 20 years of pension service dies, the qualified survivors will each receive the amount specified in Section 6.07 of this article or the minimum monthly Group A death benefit as provided under Subsection (c), (d), (e), or (f) of this section, as applicable, whichever is greatest.

Sec. 6.11. MINIMUM BENEFITS TO GROUP B PRIMARY PARTIES AND THEIR QUALIFIED SURVIVORS. (a) Except as provided by Subsections (b), (c), and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group B benefits provided by this section shall be paid to any Group B primary party or the primary party's qualified survivors, except that a Group B primary party who elects to receive an actuarially reduced Group B retirement pension because of the primary party's request to receive the pension at or after age 45, but before age 50 and the primary party's qualified survivors, or an alternate payee of the primary party, are not entitled to the Group B minimum benefits specified by this section.

(b) If a Group B primary party leaves active service with 20 or more years of pension service, the Group B primary party is entitled to receive a Group B minimum retirement pension equal to the greater of (i) \$1,500 a month or (ii) \$925 a month, which sum may (A) increase at the rate of \$5 a month for each year of pension service beyond 20 years, but the increase may not exceed \$75 and (B) be adjusted in the manner described by Section 6.12(a) of this article. If a Group B primary party's Group B retirement pension is or becomes subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly Group B retirement pension payable to the Group B primary party and the alternate payee is less than the actuarial equivalent of the minimum monthly Group B retirement pension as calculated under this subsection, the Group B primary party's monthly Group B retirement pension will be increased so that the sum of the actuarial equivalents of both the alternate payee's and the Group B primary party's Group B retirement pensions equals the actuarial equivalent of the minimum monthly Group B retirement pension as calculated under this subsection.

(c) If a Group B primary party leaves active service with less than 20 years of pension service, the primary party is entitled to receive a minimum monthly Group B retirement pension equal to the greater of (i) \$1,500 a month divided by 20 and multiplied by the Group B primary party's number of years of pension service or (ii) \$925 a month divided by 20 and multiplied by the Group B primary party's number of years of pension service, which amount is then adjusted in the manner described by Section 6.12(a) of this article. If a Group B primary party's retirement pension is or becomes subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly Group B retirement pension payable to the Group B primary party and the alternate payee is less than the actuarial equivalent of the monthly retirement pension as calculated under this subsection, the Group B primary party's monthly Group B retirement pension will be increased so that the sum of the actuarial equivalents of the alternate payee's and the Group B primary party's monthly Group B retirement pensions equals the actuarial equivalent of the minimum monthly Group B retirement pension as calculated under this subsection.

(d) In the absence of qualified surviving children, the qualified surviving spouse of a Group B primary party will receive a minimum Group B death benefit equal to the greater of (i) \$750 a month or (ii) \$600 a month adjusted in the manner described by Section 6.12(a) of this article.

(e) A qualified surviving spouse of a Group B primary party will receive, if there are qualified surviving children, the greater of a minimum Group B death benefit of 50 percent of the primary party's minimum monthly Group B retirement pension described by Subsection (b) or (c) of this section, whichever is applicable. The qualified surviving children, as a group, will receive the greater of a minimum monthly Group B death benefit of 50 percent of the minimum monthly Group B retirement pension described by Subsection (b) or (c) of this section, whichever is applicable, to be divided equally among them.

(f) In the absence of a qualified surviving spouse, the qualified surviving children of a Group B primary party, as a group, will receive a minimum Group B death benefit equal to the greater of (i) \$750 a month or (ii) \$600 a month adjusted in the manner described by Section 6.12(a) of this article, to be divided equally between them.

(g) In the absence of either a qualified surviving spouse or qualified surviving children, each qualified surviving dependent parent of the deceased Group B primary party will receive a Group B minimum death benefit equal to the greater of 50 percent of the Group B primary party's minimum monthly Group B retirement pension described by Subsection (b) or (c) of this section, whichever is applicable. If only one qualified surviving dependent parent is surviving, the parent will receive a Group B minimum death benefit of 50 percent of the minimum monthly Group B retirement pension described by Subsection (b) or (c) of this section, whichever is applicable.

(h) Notwithstanding the minimum monthly Group B retirement pension otherwise described by this section, a Group B primary party who left active service on a nonservice-connected disability with less than 20 years of pension service will receive a minimum monthly Group B disability pension equal to the greater of (i) \$75 multiplied by the number of years of the primary party's pension service or (ii) \$46.25 multiplied by the number of years of the primary party's pension service, the product adjusted in the manner described by Section 6.12(a) of this article. If the Group B primary party's Group B disability pension is or becomes subject to a qualified domestic relations order and the sum of the actuarial equivalents of the monthly Group B disability pension payable to the Group B primary party and the alternate payee is less than the actuarial equivalent of the monthly disability pension as calculated under this subsection, the Group B primary party's monthly Group B disability pension will be increased so that the sum of the actuarial equivalents of the alternate payee's and the Group B primary party's monthly Group B disability pensions equals the actuarial equivalents of the minimum monthly Group B disability pension as calculated under this subsection. If a Group B primary party who was receiving a nonservice-connected Group B disability pension before the completion of 20 years pension service dies, the qualified survivors will receive the amount specified in Section 6.08 of this article, or the Group B minimum monthly death benefits granted to qualified survivors as provided by Subsections (d), (e), (f), and (g) of this section; as applicable, whichever is greater.

Sec. 6.12. ADJUSTMENTS TO RETIREMENT AND DISABILITY PENSION BENEFITS. (a) Annually on the first day of October, a retirement pension calculated under Section 6.01 or 6.02 of this article, a disability pension calculated under Section 6.04 or 6.05 of this article, or a death benefit calculated under Section 6.07 or 6.08 of this article currently in pay status, or pending board approval on the last day of September, will be increased by an amount equal to four percent, not compounded, of the original amount of the retirement or disability pension or death benefit.

(b) A Group B retirement or Group B disability pension paid to any Group B pensioner may not be less than the Group B pensioner's base pension. The death benefit of a Group B qualified surviving spouse, Group B qualified surviving dependent parents, as a group, or Group B qualified surviving children, as a group, may not be less than 50 percent of a Group B pensioner's base pension.

Sec. 6.13. SUPPLEMENT TO CERTAIN RECIPIENTS 55 YEARS OF AGE OR OLDER. If a pensioner had at least 20 years of pension service under any plan adopted pursuant to Article 6243a or this article, or if a pensioner is receiving a service-connected disability pension, the pensioner, the pensioner's qualified surviving spouse who is eligible to receive benefits under this article, or the pensioner's qualified surviving children, as a group, under Section 6.06(o) of this article are entitled to receive, when the pensioner or qualified surviving spouse attains 55 years of age, the greater of a monthly supplement equal to \$50 or

three percent of their total monthly benefit, and for years beginning on and after January 1, 1991, the monthly supplement will be equal to the greater of \$75 or three percent of their total monthly benefit. For purposes only of calculating this supplement, the phrase "their total monthly benefit" means the amount payable to a pensioner or qualified survivors under the terms of the plans described by this section under which the pensioner or qualified survivor elected to receive benefits but does not include the supplement authorized by this section.

Sec. 6.14. DEFERRED RETIREMENT OPTION PLAN. (a) In lieu of either leaving active service and commencing a retirement pension as provided for under Section 6.01 or 6.02 of this article, whichever is applicable, or remaining in active service and continuing to accrue additional pension benefits as provided under Section 6.01 or 6.02, a member who is eligible to receive an unreduced retirement pension under Section 6.01 or 6.02 may remain in active service, become a participant in the Deferred Retirement Option Plan ("DROP") in accordance with Subsections (b) and (c) of this section, and defer the beginning of the person's retirement pension. Once an election to participate in the DROP has been made, the election continues in effect as long as the member remains in active service. On leaving active service, the member may apply for a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, together with any DROP benefit provided under this section.

(b) The election to participate in the DROP shall be made in accordance with procedures set forth in any uniform and nondiscriminatory election form adopted by the board and in effect from time to time. To determine the proper amount to be credited to a member's DROP account, the election shall indicate whether the member desires to receive a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable. The election may be made at any time on or after the date the member becomes eligible for an unreduced retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, and becomes effective on the first day of the first month after the date on which the member makes the election. On and after the effective date of the election, the member will no longer make member contributions to the fund, notwithstanding Section 4.03(b) or (f) of this article, whichever is applicable. The election by one or more members to participate in the DROP has no effect on the amount of city contributions to the fund under Section 4.02 of this article.

(c) Each month after a member has made an election to participate in the DROP and indicated a desire to receive a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, and until the member leaves active service, an amount equal to the retirement pension the member would have received under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02, whichever is applicable, for that month if the member had left active service and been granted a retirement pension by the board on the effective date of DROP participation shall be transferred to a separate DROP account maintained within the fund for the benefit of the member. Amounts held in a member's DROP account shall be credited at the end of each calendar month with interest at a rate that will approximately equal one-twelfth of the annual rate assumed by the pension system's qualified actuary and approved by the board as the assumed actuarial rate of return for the fund.

(d) On leaving active service and on the board's grant of a retirement pension, a member who participates in DROP shall begin to receive the balance in the person's DROP account under one of the following methods of distribution elected by the member:

(1) a single-sum distribution made at a time selected by the member but not later than April 1 of the year after the member attains 70-1/2 years of age;

(2) an annuity to be paid in equal monthly payments for the life of the member, or for the life of the member and a designated beneficiary in the same manner as a retirement pension computed under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, determined as of the date the member leaves active service based on the person's account balance and age and the age of the designated beneficiary, if applicable, on that date and using the mortality and earnings assumptions being used on that date by the pension system's qualified actuary and approved by the board as the assumed actuarial rate of return for the fund; or

(3) substantially equal monthly or annual payments of the person's account balance beginning at a time selected by the member that is on or before April 1st of the year after the member attains 70-1/2 years of age and extending over a fixed period that does not exceed the life expectancy of the member, or the life expectancy of the member and the member's designated beneficiary, if applicable.

(e) The DROP account balance of a member who elects the method of distribution described by Subsection (d)(3) of this section shall be credited with interest on the unpaid balance at the end of each calendar month in the same manner as is prescribed by Subsection (c) of this section. A member may change a distribution election at any time before the member attains 70-1/2 years of age to receive one or more additional payments or to accelerate or delay any payment not then due, if the change is communicated to the plan administrator, in accordance with procedures then in effect, not less than 30 days before the day it is to take effect and if the change does not result in a failure of the distributions to satisfy the requirements of Section 401(a)(9) of the code.

(f) Any election made in accordance with Subsection (d) of this section may be changed at any time before leaving active service to any other election permitted by that subsection, subject to the requirements for spousal consent, in Section 6.14(d)(1), if applicable.

(g) The provisions of Sections 6.06, 6.07, and 6.08 of this article pertaining to death benefits of a qualified survivor do not apply to amounts held in a member's DROP account, and the class of persons eligible to become qualified survivors of a member closes on the effective date of the member's participation in DROP. Instead, a member who participates in DROP may designate a beneficiary to receive the balance of the member's DROP account in the event of the member's death in the following manner:

(1) The beneficiary designation must be made on an election form adopted by the board and in effect from time to time and in accordance with the conditions on the form, except that if the member is married, the designation of a beneficiary other than the member's spouse is valid only if the spouse consents to the designation at the time, in the manner, and on the consent form as is adopted by the board and in effect from time to time.

(2) If a member who participates in DROP dies while in active service or before the beginning of the member's DROP account, distributions will begin no more than one year after the date of the member's death under a method described by Subsection (d) of this section and shall be completed within the life, or life expectancy, of the designated beneficiary.

(3) If a member who participates in DROP dies after having begun to receive distributions in accordance with Subsection (d) of this section, the balance in the member's DROP account shall continue to be distributed to the member's designated beneficiary or other person described by Subdivision (4) of this subsection in accordance with any elections that had been made under Subsection (d) of this section.

(4) If the deceased member has not designated a beneficiary or has designated a beneficiary but not a method of distribution, the member's DROP account shall be distributed in a single-sum payment as soon as administratively feasible after the member's death to the beneficiary if one was designated and otherwise to the spouse if the member was married at the time of death or, if the member was not married, to the member's estate.

(5) A member who participates in DROP becomes ineligible for any disability benefits described by Sections 6.03, 6.04, and 6.05 of this article, but instead, on the board's acknowledgment of a disability that would otherwise qualify the member for disability benefits, the board shall grant a retirement pension in accordance with Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, and the member is also entitled to receive both a retirement pension and a distribution of the DROP account in accordance with Subsection (d) of this section.

(h) The base pay in effect as of the effective date of a Group A member's participation in DROP shall be used in calculating the member's Group A retirement pension under Section 6.01 of this article. A Group A member who elects to participate in DROP does not accrue additional pension service for purposes of computing the Group A retirement pension

provided under Section 6.01(e) of this article for any period after the effective date of the election.

(i) A Group B member who elects to participate in DROP does not accrue additional pension service for purposes of calculating a Group B retirement pension under Section 6.02 of this article, and any compensation earned by a Group B member during that period may not be considered in the calculation of the benefit.

(j) If a pensioner who participated in DROP returns to active service, the person must once again become a participant in DROP under the terms and conditions in effect at the time of the person's return.

(k) Without affecting any member's continued participation in DROP and notwithstanding Subsections (a)–(j) of this section, no member may elect to begin participation in DROP after any date, not sooner than five years after the effective date of the DROP, on which the pension system's qualified actuary certifies that DROP participation is resulting in a significant actuarial loss to the fund.

Sec. 6.15. MEDICAL EXAMINATION. (a) The board may require the following pensioners receiving a disability pension to appear and undergo a medical examination by the health director or, if the health director approves, by any licensed medical practitioner, to determine if the pensioner's disability continues or has been removed to the extent that the pensioner is able to resume duties with the department:

(1) any Group A pensioner who has served less than 20 years;

(2) any Group A pensioner who elected a Group B disability pension under Section 6.04(e) of this article and who has served more than 20 years but is less than 55 years of age; and

(3) any Group B pensioner who elected a Group B disability under Section 6.05 of this article and is less than 50 years of age.

(b) Any medical examination under this section is subject to the following conditions:

(1) Except as otherwise provided by this section, the board has complete discretion to require a pensioner to appear and undergo a medical examination as well as the time that may pass between examinations. When it becomes clear to the board from reliable medical evidence that the disability is unequivocally permanent and is not expected to diminish, the board may not require subsequent examinations.

(2) A pensioner may not be required to undergo a medical examination more often than once in a six-month period, except that the board may order the pensioner to undergo an examination at any time if the board has reason to believe the pensioner's disability has been removed and that the pensioner may be able to resume duties with the pensioner's former department or if the pensioner requests to be allowed to return to duty.

(3) If a pensioner fails to undergo an examination after being notified by the board that the examination is required, the board may discontinue disability benefits until the pensioner has undergone the examination and the results of the examination have been sent to the board.

(4) If the pensioner is examined by an approved outside medical practitioner other than the health director, the reasonable and customary cost of the examination, if any, is payable from the assets of the fund.

(c) After a pensioner has undergone a medical examination, the health director shall provide the board with a report of the pensioner's present medical condition together with the doctor's opinion as to whether the pensioner continues to be disabled or whether the pensioner is no longer disabled to the extent that the pensioner could resume duties with the pensioner's former department. The report and opinion may be divulged only to persons who have a legitimate need for them.

(d) If, in the opinion of the health director, the pensioner continues to be disabled, the board must continue payment of benefits. If, in the opinion of the health director, the pensioner is no longer disabled, or is not so disabled that the pensioner could not perform some duties for the pensioner's former department, the board shall notify the department to determine if a position is available. If a position is available, the board shall notify the pensioner to return to duty. Disability benefits shall continue to be paid, however, until the

pensioner returns to active service. However, if the pensioner refuses to return to duty or is refused employment by either department for reasons other than disability, the board shall order disability payments stopped. If a position is not available, the board must continue payments of the pensioner's disability pension.

(e) Pursuant to its authority under Section 6.06(o) of this article to review and modify any funding relating to a qualified surviving child's handicap, the board may require a handicapped qualified surviving child receiving death benefits to appear and undergo medical examination by the health director or, if the health director approves, by any licensed medical practitioner, to determine if the handicap continues or if the handicap has been removed.

Sec. 6.16. **WAIVER OF BENEFITS.** (a) A pensioner who is on either service or disability retirement, a qualified surviving spouse, a handicapped qualified surviving child, a member who may be a participant in DROP, a beneficiary of a deceased former DROP participant, or a qualified surviving dependent parent may, on a form prescribed by the board and filed with the administrator, irrevocably waive all or a portion of the benefits, to which the person who waives the benefit is entitled.

(b) The irrevocable waiver described by Subsection (a) of this section applies only to retirement, disability, or DROP survivor benefits that become payable on or after the date the waiver is filed.

(c) If there are two qualified surviving dependent parents receiving death benefits, the waiver described by Subsection (a) of this section must be executed by both of the parents.

Sec. 6.17. **DENIAL OF BENEFITS: DEATH CAUSED BY SURVIVOR.** A qualified survivor or beneficiary of a member's DROP account is not eligible for, or entitled to, benefits if the person is the principal or an accomplice in wilfully bringing about the death of a primary party or another qualified survivor or beneficiary of a member's DROP account whose death would otherwise have resulted in a benefit or benefit increase to the person. The determination of the board that a person wilfully brought about the death must be made during a meeting of the board from a preponderance of the evidence presented and is not controlled by any other finding in any other forum, whether considered under the same or another degree of proof.

Sec. 6.18. **INVESTIGATION.** (a) The board shall consider all applications for retirement and disability pensions of members, all applications for death benefits by qualified survivors, and all elections for participation by a member in DROP. The board shall give notice to those persons, advising of their right to appear before the board and offer such sworn evidence as they may desire. Any primary party, survivor, or other person claiming DROP benefits may appear before the board in person and offer testimony that is relevant to a contested application for a retirement pension, disability pension, death benefit, or DROP benefit. The chairman of the board may issue process for witnesses, administer oaths to witnesses, and examine any witness as to any matter affecting benefits under any plan within the pension system. Process for witnesses shall be served by any member of the police or fire department or by any other method of serving process or person permitted by the state law in any civil judicial proceeding. A witness who fails or refuses to attend and testify may be compelled to attend and testify, as in any judicial proceeding. The board may seek assistance from any court of competent jurisdiction to further compel or sanction a witness who fails or refuses to attend and testify.

(b) Any primary party, spouse, child, dependent parent, or other person claiming DROP benefits who is aggrieved by a determination of the board on the person's application for or continuation of a retirement pension, disability pension, or death benefit, or an election for DROP benefits may appeal the board determination to a state district court in the county where the pension system is located by giving written notice of appeal. The notice shall contain a statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the secretary of the board within 20 days after the date of the board's determination. After service of the notice, the party appealing shall file with the state district court a copy of the notice of intention to appeal, together with an affidavit of the party making service showing how, when, and on whom the notice was served.

(c) Within 30 days after the date of service of the notice of appeal on the board, the secretary of the board shall make up and file with the state district court a transcript of all papers and proceedings in the case before the board. When the copy of the notice of appeal

and the transcript has been filed with the court, the appeal is perfected, and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing.

(d) At any time before rendering its decision on the appeal, the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on appeal, the court shall give to each party to the appeal a copy of the decision of the case. The decision or order of the court is appealable in the same manner as are civil cases generally.

(e) The board shall approve all money used for investigations as provided under Section 4.01 of this article. The board may request the investigative services of either the police or fire departments in connection with any matter arising under this section.

Sec. 6.19. **CERTIFICATE OF RETIREMENT.** When a member has earned 20 years of pension service, the member shall be issued a certificate of retirement that, barring administrative error, miscalculation, or other error, after issuance is incontestable. The certificate shall state that the calculation of the retirement pension to which the member is entitled, or any disability benefits to which the member may become entitled, shall be determined solely under the actual terms of the combined pension plan. The certificate shall further state that in the case of the member's death, the member's survivors shall be entitled to survivor benefits as determined under the terms of the combined pension plan. The certificate shall be signed by the mayor, or the mayor pro tem, or the city manager and by the chairman of the board and attested under the seal of the city by the city secretary.

PART 7. AMENDMENT OF PENSION SYSTEM

Sec. 7.01. **AMENDMENT.** (a) The members of the plans within the pension system have previously amended the pension system by establishing Plan A and Plan B pursuant to Sections 11A and 11B, respectively, of Article 6243a and establishing this article. The members of the plans within the pension system may further amend any plan within the pension system in any manner, including amendments to:

(1) benefits or eligibility requirements for those benefits, or both; or

(2) create a new plan or amend or restate any existing plan within the pension system that embodies changes in addition to those set forth in Subdivision (1) of this subsection if:

(A) the amendment is first approved as being actuarially sound by a qualified actuary selected by a majority vote of the board;

(B) the amendment is approved by a majority of the board;

(C) 65 percent of the votes cast by membership of each of the collective plans within the pension system are cast in favor of the amendment, the voting to be made by secret ballot; and

(D) the amendment does not deprive any member of any plan within the pension system of any of the benefits that have become fully vested or nonforfeitable to the member unless the member:

(i) executes a written consent to participate in the amended plan; and

(ii) has qualified under the amended plan.

(b) Any amendment made pursuant to this section may not in any manner affect any rights or responsibilities existing under Article 6243a or create any new rights or responsibilities except as fully set forth in the adopted amendment.

(c) Any amendment made pursuant to this section is not required to be ratified by the legislature, but is effective when properly recorded in the permanent records of the pension system.

(d) Unless otherwise provided by the amendment, the amendment applies only to members of the plans within the pension system who are on active service at the time of the amendment and those other persons who may qualify under the provisions of the plan affected or created by the amendment.

(e) Before any election under this section, the board by majority vote shall issue a notice of the calling of the election. The notice must state the proposition to be voted upon and include

verbatim the amendment sought to be made. The notice must be posted at least two weeks before the date of the election at the city hall and at all fire stations and police stations and upon the bulletin boards at the places where the police officers and fire fighters are assembled for duty. The balloting in that election shall be held over a period of at least three consecutive 24-hour periods with ballot boxes placed at the places that may be determined by the board, so as to be generally convenient to those voting. The ballot boxes shall be kept locked at all times until canvassed by the board or under their supervision.

(f) The minutes of the board shall be reduced to writing and certified by the administrator of the board showing:

- (1) the proposed amendment whether to one or more plans within the pension system;
- (2) the calling of the election and the giving of notice of the election; and
- (3) the canvassing of the votes in the election, under the general supervision of the board, and a certification of the results by the board at a called meeting.

(g) When reduced to writing the minutes shall become a part of the permanent records of the pension system to be filed in the office of the secretary of the board. The minutes are evidence of the matters contained in the minutes and are admissible in all courts and proceedings.

(h) Notwithstanding any amendment adopted under this section, contributions by the city to the fund shall be the same as provided for under Section 4.02(c) of this article. Any change in the rate of the city's contributions to the fund may only be made in accordance with Section 4.02(a) of this article.

PART 8. TREATMENT UNDER FEDERAL AND STATE LAW

Sec. 8.01. QUALIFICATION UNDER FEDERAL TAX LAW. (a) The plans within the pension system and the assets of the fund are intended to qualify under Section 401 of the code, be exempt from federal income taxes under Section 501(a) of the code, and conform at all times to applicable requirements of law, regulations, and orders of duly constituted federal governmental authorities. Accordingly, if any provision of this article is subject to more than one construction, one of which will permit the qualification of a plan that is within the pension system, that construction that will permit the plan to qualify and conform will prevail.

(b) The plans within the pension system as well as the assets of the fund shall be maintained for the exclusive benefit of members and their beneficiaries. At no time before the termination of all the plans within the pension system and the satisfaction of all liabilities with respect to members and their beneficiaries under all plans shall any part of the principal or interest from the assets of the fund be used for or diverted to purposes other than the exclusive benefit of the members and beneficiaries.

(c) Notwithstanding any other provisions of this article, the pension provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this subsection.

(1) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of:

(A) \$90,000; or

(B) 100 percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation years for a member whose total pension service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the city.

(2) Benefits provided to a member under this article and under any defined benefit plan or plans maintained by the city shall be aggregated for purposes of determining whether the limitations in Subdivision (1) of this subsection are met. If the aggregate benefits otherwise payable from any qualified plans created under this article and any other defined benefit plan or plans maintained by the city would otherwise exceed the limitations of Subdivision (1) of this subsection, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(3) The adjustments on retirement are the following:

(A) If the annual benefit begins before a member attains age 62, the \$90,000 limitation, as adjusted, shall be reduced in a manner prescribed by the secretary of the treasury. However, that adjustment may not reduce the member's annual benefit below \$75,000, if the member's benefit begins after age 55, or the actuarial equivalent of \$75,000 beginning at age 55 if benefits begin before age 55. Furthermore, except as provided by Paragraph (C) of this subdivision, an adjustment may not reduce the member's annual benefit below \$50,000, regardless of the age at which the benefit begins.

(B) If the annual benefit begins after a member attains age 65, the \$90,000 limitation, as adjusted, will be increased so that it is the actuarial equivalent of the \$90,000 limitation at age 65.

(C) If a member's benefits begin before the member has at least 15 years of pension service as a full-time employee of the police or fire department, or both, including credit for full-time service in the armed forces of the United States, Paragraphs (A) and (B) of this subdivision shall be applied by substituting "social security retirement age" for "age 62" and for "age 65," and the last two sentences of Paragraph (A) of this subdivision do not apply in computing the benefit limitation for that member.

(D) The portion of a member's benefit that is attributable to the member's own contributions is not part of the annual benefit subject to the limitations of Subdivision (1) of this subsection. Instead, the amount of those contributions is treated as an annual addition to a qualified defined contribution plan maintained by the city.

(4)(A) The dollar limitation on annual benefits provided by Subdivision (1) of this subsection, and the \$50,000 limitation provided by Subdivision (3) of this subsection, but not the \$75,000 limitation provided by that subsection, shall be adjusted annually as provided by Section 415(d) of the code and the regulations prescribed by the secretary of the treasury. The adjusted limitation is effective as of January 1 of each calendar year and is applicable to limitation years ending with or within that calendar year.

(B) The limitation provided by this paragraph for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by Section 415(d) of the code and the regulations prescribed by the secretary of the treasury.

(5) The following interest rate assumptions shall be used in computing the limitations under this section:

(A) For the purpose of determining the portion of the annual benefit that is purchased with member contributions, the interest rate assumption is 8.5 percent, compounded annually, for plan years beginning before 1988 and 120 percent of the federal mid-term rate, as in effect under Section 1274 of the code, compounded annually, for plan years beginning after 1987.

(B) For the purpose of adjusting the annual benefit to a straight life annuity, the interest rate assumption is five percent, unless a different rate is required by the secretary of the treasury.

(C) For the purpose of adjusting the \$90,000 limitation after a member attains age 65, the interest rate assumption is five percent, unless a different rate is required by the secretary of the treasury, and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.

(6) For purposes of Subdivisions (1) and (3) of this subsection, an adjustment under Section 415(d) of the code may not be taken into account before the limitation year for which that adjustment first takes effect. For purposes of Subdivisions (1) and (5) of this subsection, an adjustment is not required for the value of qualified joint and survivor annuity benefits, preretirement death benefits, postretirement medical benefits, or postretirement cost-of-living increases made in accordance with Section 415(d) of the code and Section 1.415-3(c) of the Income Tax Regulations.

(7) This plan may pay an annual benefit to any member in excess of the member's maximum annual benefit otherwise allowed if:

(A) the annual benefit derived from the city's contributions under any qualified plans within this article and all defined benefit plans maintained by the city does not in the aggregate exceed \$10,000 for the limitation year or for any prior limitation year; and

(B) the member has not at any time participated in a defined contribution plan maintained by the city.

For purposes of this subdivision, member contributions to the plan are not considered a separate defined contribution plan maintained by the city.

(8) If a member has less than 10 years of pension service in the plan at the time the member begins to receive benefits under the plan, the \$90,000 limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of pension service and the denominator is 10; provided, however, that the fraction may not be less than one-tenth. The 100 percent limitation of Subdivision (1)(B) of this subsection, and the \$10,000 limitation of Subdivision (7) of this subsection shall be reduced in the same manner as provided by this subdivision, except the numerator shall be the number of years of employment with the city rather than years of pension service.

(9) If a member is or has been a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the city, the following provisions shall apply:

(A) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0.

(B) The defined benefit plan fraction for any limitation year is a fraction in which:

(I) the numerator is the projected annual benefit of a member, determined as of the close of the limitation year pursuant to Section 1.415-7(b)(3) of the Income Tax Regulations; and

(II) the denominator is the lesser of:

(i) the product of 1.25 and the maximum dollar limitation provided by Subdivision (1)(A) of this subsection, as adjusted, for the limitation year; or

(ii) the product of 1.4 and the amount that may be taken into account under Subdivision (1)(B) of this subsection for the limitation year.

(C) The defined contribution plan fraction for any limitation year is a fraction in which:

(I) the numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(II) the denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the city:

(i) the product of 1.25 and the dollar limitation in effect under Section 415(c)(1)(A) of the code for the limitation year, determined without regard to Section 415(c)(6) of the code; or

(ii) the product of 1.4 and the amount that may be taken into account under Section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987; the annual additions may not be recomputed to treat all member contributions as an annual addition.

(D) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the pension system, the administrator shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the administrator shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(10) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the city, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the city, shall be treated as one defined contribution plan.

(11) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of Section 415 of the code and all regulations promulgated under the

code. If any provision of Section 415 of the code is repealed or is not enforced by the Internal Revenue Service, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

(d) A member's retirement pension may not begin later than April 1 of the year after the later of the year in which the member leaves active service or the year in which the member attains age 70-1/2. Benefits to a qualified beneficiary may not begin later than one year after the date of the member's death.

(e) Any member or beneficiary who receives any distribution from any plan within the system that is an eligible rollover distribution as defined by Section 402(f)(2)(A) 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 regarding that transfer to the administrator in accordance with procedures established by the administrator.

(f) The annual compensation taken into account under this article may not exceed \$200,000 for any calendar year. For a Group A member the term "annual compensation" means the aggregate of the member's base pay. For a Group B member the term "annual compensation" means the aggregate of the member's computation pay for any given plan year. The \$200,000 limit shall be adjusted on January 1 of each year at the same time and in the same manner as provided by Section 415(d) of the code. In determining the compensation of a member for purposes of this limitation, the family aggregation rules of Section 414(q)(6) of the code apply, except that the term "family member" includes only the spouse of the member and any lineal descendants of the member who have not attained age 19 at the end of the plan year. If as a result of this family aggregation requirement, the \$200,000 limit is exceeded, the limitation shall be prorated among the affected individuals in proportion to each individual's compensation as determined before application of the limit.

Sec. 8.02. EXCESS BENEFIT PLAN FOR POLICE OFFICERS AND FIRE FIGHTERS. On the enactment of federal legislation enabling public retirement systems to establish excess benefit plans for the benefit of employees for whom additional benefits from retirement plans qualified under Section 401 of the code would exceed the limitations of Section 415 of the code, there is created outside the pension system a separate, nonqualified excess benefit plan containing the following terms and provisions:

(a)(1) All definitions prescribed by Section 2.01 of this article are applicable to the plan created pursuant to this section except:

(A) if a different definition is set forth in this subsection; or

(B) the context in which a term is used in this section indicates a different meaning is clearly intended than that prescribed by Section 2.01 of this article.

(2) "Excess benefit plan" means this separate, nonqualified, unfunded excess benefit plan as created by this section for the benefit of eligible members, as amended or restated from time to time.

(3) "Qualified plan" means any plan maintained within the pension system or maintained by the city outside the pension system for the exclusive benefit of some or all of the employees of the city if the plan has been found by the Internal Revenue Service to be qualified or has been treated by the city as a qualified plan under Section 401 of the code.

(4) "Maximum benefit" means the retirement benefit a member or, the spouse, any child, or any dependent parent of a member if those persons are entitled, is entitled to receive from all qualified plans in any month after giving effect to Section 8.01 of this article and any similar provisions of any other qualified plans designed to conform to Section 415 of the code.

(5) "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 8.01 of this article and comparable provisions of other qualified plans would exceed the maximum benefit permitted under Section 415 of the code.

(6) "Unrestricted benefit" means the monthly retirement benefit a member, or the spouse or any child of a member, would have received under the terms of all qualified

plans except for the restrictions of Section 8.01 of this article and any similar provisions of any other qualified plans designed to conform to Section 415 of the code.

(b)(1) An excess benefit participant who is receiving benefits from an applicable qualified plan is entitled to a monthly benefit under this excess benefit plan in an amount equal to the lesser of:

(A) the member's unrestricted benefit less the maximum benefit; or

(B) the amount by which the member's monthly benefit from the qualified plan or plans approved by the members has been reduced due to the limitations of Section 415 of the code.

(2) In the case of the death of an excess benefit participant whose spouse or child is entitled to preretirement or postretirement death benefits under a qualified plan, the excess benefit participant's surviving spouse or child is entitled to a monthly benefit under the excess benefit plan equal to the benefit determined in accordance with the qualified plans without regard to the limitations under Section 8.01 of this article or Section 415 of the code, less the maximum benefit.

(3) Unless the excess benefit participant makes a timely election to the contrary, a retirement benefit payable under this excess benefit plan shall be paid in the form and at the time it would have been paid under the applicable qualified plan except for the limitations under Section 415 of the code. However, retirement benefits payable under this excess benefit plan shall be paid at the time and in the form, including a single-sum distribution, as the excess benefit participant elects from among the benefit payment forms made available under the election form as approved by the board. An excess benefit participant makes an election under this subdivision by sending written notice to the administrator on the election form approved by the board. Each optional benefit form permitted under this excess benefit plan shall be the actuarial equivalent of each other permitted benefit form. On or after an excess benefit participant's leaving active service with an entitlement to a retirement benefit under any qualified plan approved by the members, a benefit under this subdivision may be elected to be paid.

(c)(1) This plan shall be administered by the board, and the administrator shall also carry out the business of the board with respect to this excess benefit plan. Except as provided to the contrary by this subsection, the rights, duties, and responsibilities of the board and administrator shall be the same for this excess benefit plan as for the qualified pension plans within the pension system.

(2) The qualified actuary employed pursuant to Section 4.08 of this article is responsible for determining the amount of benefits that may not be provided under the qualified plans solely by reason of the limitations of Section 415 of the code and thus the amount of city contributions that will be made to this excess benefit plan rather than to a qualified plan.

(3) The legal advisors described by Section 3.03 of this article shall also provide advice to the board for this excess benefit plan.

(d) Contributions may not be accumulated under this excess benefit plan to pay future retirement benefits. Instead, each payment of city contributions that would otherwise be made to the fund pursuant to Section 4.02 of this article or comparable provisions of other qualified plans approved by the members shall be reduced by the amount determined by the administrator as necessary to meet the requirements for retirement benefits under this excess benefit plan until the next payment of city contributions is expected to be made to the fund by the city. The city shall then pay to this excess benefit plan, out of the withheld city contributions no earlier than the 14th day before the date of each distribution of monthly retirement benefits is required to be made from this excess benefit plan, the amount necessary to satisfy the obligation to pay this excess benefit plan monthly retirement benefits. The administrator shall satisfy the obligation of this excess benefit plan to pay retirement benefits out of the city contributions so transferred for that month. The city contributions otherwise required to the pension system pursuant to Section 4.02 of this article and any other qualified plan approved by the members shall be divided into those contributions required to pay retirement benefits pursuant to this section and those contributions paid into and accumulated to pay the maximum benefits required under the

qualified plans. City contributions made to provide retirement benefits pursuant to this section may not be commingled with the monies of the fund or any other qualified plan.

(e) Amendments to this excess benefit plan shall be made in the same manner provided by Section 7.01 of this article.

Sec. 8.03. EXEMPTION OF BENEFITS FROM JUDICIAL PROCESS. (a) A portion of the fund or benefit or amount awarded to any primary party qualified survivor or beneficiary of a member's DROP account under this article may not be held, seized, taken, subjected to, or detained or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings issued from or by any court for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demands, or judgment against any person entitled to benefits from any plan within the pension system. The fund or any claim against the fund may not be directly or indirectly assigned or transferred, and any attempt to transfer or assign the fund or a claim against the fund is void.

(b) A benefit under any plan created or existing pursuant to this article or Article 6243a is subject to division pursuant to the terms of a qualified domestic relations order. The administrator shall determine the qualifications of a domestic relations order according to a uniform, consistent procedure approved by the board. The total benefit payable to a primary party or to an alternate payee under a qualified domestic relations order may not actuarially exceed the benefits to which a primary party would be entitled in the absence of the qualified domestic relations order. In calculating the alternate payee's benefits under a qualified domestic relations order, the interest rate is the rate used by the pension system's actuary in the actuarial evaluation for that year, except that the minimum interest rate for this purpose is the minimum required by Section 414 of the code.

(c) This section does not preclude the payment of death benefits to a support trust for certain surviving children of a primary party pursuant to Section 6.06(n) of this article.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 11, 1993, by a non-record vote; the House concurred in Senate amendments on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 23, 1993: Yeas 30, Nays 0.

Approved June 18, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.