

Art. 6243e.2(1). Firefighters' Relief and Retirement Fund in Municipalities of at Least 1,600,000 Population.

Sec. 1. Definitions.

In this article:

(1-a) "Actuarial data" includes:

(A) the census data, assumption tables, disclosure of methods, and financial information that are routinely used by the fund actuary for the fund's valuation studies or an actuarial experience study under Section 13D of this article; and

(B) other data that is reasonably necessary to implement Sections 13A through 13F of this article.

(1-b) "Actuarial experience study" has the meaning assigned by Section 802.1014, Government Code.

(1-c) "Amortization period" means the time period necessary to fully pay a liability layer.

(1-d) "Amortization rate" means the sum of the scheduled amortization payments for a given fiscal year for the current liability layers divided by the projected pensionable payroll for that fiscal year.

(1-e) "Assumed rate of return" means the assumed market rate of return on fund assets, which is seven percent per annum unless adjusted as provided by this article.

(1-f) "Average monthly salary" means, if the member has participated in the fund for:

(A) three or more years, the total salary received by a member as a firefighter over the member's:

(i) highest 78 biweekly pay periods for a member hired before the year 2017 effective date, including a member who was hired before the year 2017 effective date and who involuntarily separated from service but was retroactively reinstated in accordance with an arbitration, civil service, or court ruling; or

(ii) last 78 biweekly pay periods ending before the earlier of the date the member terminates employment with the fire department, divided by 36, or the member began participation in the DROP, divided by 36; or

(B) fewer than three years, the total salary paid to the member for the periods the member participated in the fund divided by the number of months the member has participated in the fund.

If a member is not paid on the basis of biweekly pay periods, "average monthly salary" is determined on the basis of the number of pay periods under the payroll practices of the

municipality sponsoring the fund that most closely correspond to 78 biweekly pay periods.

(1-g) "Beneficiary adult child" means a child of a member by birth or adoption who:

(A) is not an eligible child; and

(B) is designated a beneficiary of a member's DROP account by valid designation under Section 5(j-1).

(2) "Board" or "board of trustees" means the board of trustees of a firefighters' relief and retirement fund established under this article.

(3) "Code" means the federal Internal Revenue Code of 1986, as amended.

(3-a) "Confidentiality agreement" means a letter agreement sent from the municipal actuary or an independent actuary in which the municipal actuary or the independent actuary, as applicable, agrees to comply with the confidentiality provisions of this article.

(3-b) "Corridor" means the range of municipal contribution rates that are:

(A) equal to or greater than the minimum contribution rate; and

(B) equal to or less than the maximum contribution rate.

(3-c) "Corridor margin" means five percentage points.

(3-d) "Corridor midpoint" means the projected municipal contribution rate specified for each fiscal year for 31 years in the initial risk sharing valuation study under Section 13C of this article, and as may be adjusted under Section 13E or 13F of this article, and in each case rounded to the nearest hundredths decimal place.

(4) "Deferred retiree" means a member who is eligible for a benefit under Section 8(a) of this article.

(5) "Disabled child" means any individual who is the child of a member by birth or adoption and who is totally disabled as a result of a physical or mental illness or injury, including retardation, at the time the member dies or who becomes so disabled before reaching 18 years of age. The term includes a child the board determines is unable to pursue any gainful employment.

(6) "DROP" means the deferred retirement option plan under Section 5 of this article.

(7) "DROP account" means the notional account established to reflect the credits, contributions, and earnings of a member who has made a DROP election in accordance with Section 5 of this article.

(8) "Eligible child" means a child of a member by birth or adoption who is unmarried and under 18 years of age, a disabled child, or under 23 years of age, unmarried, and a full-time student enrolled in an accredited college or university, but only if the member executes an election

permitting the child to be treated as an eligible child in accordance with procedures established by the board or if the member does not have an eligible spouse.

(9) "Eligible parent" means a parent of a member, by birth or by adoption while the member was a minor, who proves to the satisfaction of the board that the parent was a dependent of the member immediately before the member's death.

(10) "Eligible spouse" means:

(A) in the case of a member who dies after June 30, 1998, a spouse to whom the member was married at the time of the member's death; or

(B) in the case of a member who dies before July 1, 1998, a spouse to whom the member was married at the time the member's benefit under this article is scheduled to begin and at the time of the member's death.

(10-a) "Employer normal cost rate" means the normal cost rate minus the member contribution rate.

(10-b) "Estimated municipal contribution rate" means the municipal contribution rate estimated in a final risk sharing valuation study under Section 13B or 13C of this article, as applicable, as required by Section 13B(a)(5) of this article.

(11) "Firefighter" means a full-time, fully paid, active, classified member of a regularly organized fire department of an incorporated municipality with a fund established under this article, including a member who has made a DROP election, but is otherwise described in this definition.

(11-a) "Fiscal year," except as provided by Section 1B of this article, means a fiscal year beginning on July 1 and ending on June 30.

(12) "Fund" means a firefighters' relief and retirement fund established under this article.

(12-a) "Funded ratio" means the ratio of the fund's actuarial value of assets divided by the fund's actuarial accrued liability.

(12-b) "Legacy liability" means the unfunded actuarial accrued liability:

(A) for the fiscal year ending June 30, 2016, reduced to reflect:

(i) changes to benefits or contributions under this article that took effect on the year 2017 effective date; and

(ii) payments by the municipality and earnings at the assumed rate of return allocated to the legacy liability from July 1, 2016, to July 1, 2017, excluding July 1, 2017; and

(B) for each subsequent fiscal year:

(i) reduced by the contributions for that year allocated to the amortization of the legacy liability; and

(ii) adjusted by the assumed rate of return.

(12-c) "Level percent of payroll method" means the amortization method that defines the amount of the liability layer recognized each fiscal year as a level percent of pensionable payroll until the amount of the liability layer remaining is reduced to zero.

(12-d) "Liability gain layer" means a liability layer that decreases the unfunded actuarial accrued liability.

(12-e) "Liability layer" means the legacy liability established in the initial risk sharing valuation study under Section 13C of this article and the unanticipated change as established in each subsequent risk sharing valuation study prepared under Section 13B of this article.

(12-f) "Liability loss layer" means a liability layer that increases the unfunded actuarial accrued liability. For purposes of this article, the legacy liability is a liability loss layer.

(12-g) "Maximum contribution rate" means the rate equal to the corridor midpoint plus the corridor margin.

(13) "Member" means a firefighter or former firefighter who has satisfied the eligibility requirements under Section 13 of this article and who has not yet received a distribution of the entire benefit to which the person is entitled under this article.

(13-a) "Minimum contribution rate" means the rate equal to the corridor midpoint minus the corridor margin.

(13-b) "Municipality" means a municipality in this state having a population of more than 2 million.

(13-c) "Municipal contribution rate" means a percent of pensionable payroll that is the sum of the employer normal cost rate and the amortization rate for liability layers, except as determined otherwise under the express provisions of Sections 13E and 13F of this article.

(13-d) "Normal cost rate" means the salary weighted average of the individual normal cost rates determined for the current active population plus an allowance for projected administrative expenses. The allowance for projected administrative expenses equals the administrative expenses divided by the pensionable payroll for the previous fiscal year, provided the administrative allowance may not exceed 1.25 percent of the pensionable payroll for the current fiscal year unless agreed to by the municipality.

(13-e) "Normal retirement age" means:

(A) for a member, including a member who was hired before the year 2017 effective date and who involuntarily separated from service but has been retroactively reinstated in accordance with an arbitration, civil service, or court ruling, hired before the year 2017 effective date, the age at which the member attains 20 years of service; or

(B) except as provided by Paragraph (A) of this subdivision, for a member hired or rehired on or after the year 2017 effective date, the age at which the sum of the member's age, in years, and the member's years of participation in the fund equals at least 70.

(14) "Off-duty disability" means a physical or mental disability that:

(A) is likely to be permanent; and

(B) results from a cause other than a bodily injury received in, or illness caused by, the performance of a member's duties as a firefighter.

(15) "On-duty disability" means a physical or mental disability that:

(A) is likely to be permanent; and

(B) results from a bodily injury received in, or illness caused by, the performance of the member's duties as a firefighter.

(15-a) "Payoff year" means the year a liability layer is fully amortized under the amortization period. A payoff year may not be extended or accelerated for a period that is less than one month.

(15-b) "Pensionable payroll" means the aggregate salary of all the firefighters on active service, including all firefighters participating in an alternative retirement plan established under Section 1C of this article, in an applicable fiscal year.

(15-c) "Price inflation assumption" means:

(A) the most recent headline consumer price index 10-year forecast published in the Federal Reserve Bank of Philadelphia Survey of Professional Forecasters; or

(B) if the forecast described by Paragraph (A) of this subdivision is not available, another standard as determined by mutual agreement between the municipality and the board.

(15-d) "Projected pensionable payroll" means the estimated pensionable payroll for the fiscal year beginning 12 months after the date of the risk sharing valuation study prepared under Section 13B of this article at the time of calculation by:

(A) projecting the prior fiscal year's pensionable payroll forward two years using the current payroll growth rate assumptions; and

(B) adjusting, if necessary, for changes in population or other known factors, provided those factors would have a material impact on the calculation, as determined by the board.

(15-e) "PROP" means the post-retirement option plan under Section 5A of this article.

(15-f) "PROP account" means the notional account established to reflect the credits and contributions of a member or surviving spouse who made a PROP election in accordance with Section 5A of this article before the year 2017 effective date.

(16) "Salary" means wages as defined by Section 3401(a) of the code, plus any amount not includable in gross income under Section 104(a)(1), Section 125, Section 132(f), Section 402(g)(2), Section 457, or Section 414(h)(2) of the code, except that with respect to amounts earned on or after the year 2017 effective date, salary excludes overtime pay received by a firefighter or the amount by which the salary earned by a firefighter on the basis of the firefighter's appointed position exceeds the salary of the firefighter's highest tested rank.

(16-a) "Third quarter line rate" means the corridor midpoint plus 2.5 percentage points.

(16-b) "Ultimate entry age normal" means an actuarial cost method under which a calculation is made to determine the average uniform and constant percentage rate of contributions that, if applied to the compensation of each member during the entire period of the member's anticipated covered service, would be required to meet the cost of all benefits payable on the member's behalf based on the benefits provisions for newly hired employees. For purposes of this definition, the actuarial accrued liability for each member is the difference between the member's present value of future benefits based on the tier of benefits that apply to the member and the member's present value of future normal costs determined using the normal cost rate.

(16-c) "Unfunded actuarial accrued liability" means the difference between the actuarial accrued liability and the actuarial value of assets. For purposes of this definition:

(A) "actuarial accrued liability" means the portion of the actuarial present value of projected benefits attributed to past periods of member service based on the cost method used in the risk sharing valuation study prepared under Section 13B or 13C of this article, as applicable; and

(B) "actuarial value of assets" means the value of fund investments as calculated using the asset smoothing method used in the risk sharing valuation study prepared under Section 13B or 13C of this article, as applicable.

(16-d) "Unanticipated change" means, with respect to the unfunded actuarial accrued liability in each subsequent risk sharing valuation study prepared under Section 13B of this article, the difference between:

(A) the remaining balance of all then-existing liability layers as of the date of the risk sharing valuation study; and

(B) the actual unfunded actuarial accrued liability as of the date of the risk sharing valuation study.

(16-e) "Unused leave pay" means the accrued value of unused leave time payable to an employee after separation from service in accordance with applicable law and agreements.

(16-f) "Year 2017 effective date" means the date on which S.B. No. 2190, Acts of the 85th Legislature, Regular Session, 2017, took effect.

(17) "Years of participation" means the number of years that a member has participated in the fund by making the contributions required by this article, as determined under rules established by the board.

Sec. 1A. Interpretation of article.

This article, including Sections 2(p) and (p-1) of this article, does not and may not be interpreted to:

(1) relieve the municipality, the board, or the fund of their respective obligations under Sections 13A through 13F of this article;

(2) reduce or modify the rights of the municipality, the board, or the fund, including any officer or employee of the municipality, board, or fund, to enforce obligations described by Subdivision (1) of this section;

(3) relieve the municipality, including any official or employee of the municipality, from:

(A) paying or directing to pay required contributions to the fund under Section 13 or 13A of this article or carrying out the provisions of Sections 13A through 13F of this article; or

(B) reducing or modifying the rights of the board and any officer or employee of the board or fund to enforce obligations described by Subdivision (1) of this section;

(4) relieve the board or fund, including any officer or employee of the board or fund, from any obligation to implement a benefit change or carry out the provisions of Sections 13A through 13F of this article; or

(5) reduce or modify the rights of the municipality and any officer or employee of the municipality to enforce an obligation described by Subdivision (4) of this section.

Sec. 1B. Fiscal year.

If either the fund or the municipality changes its respective fiscal year, the fund and the municipality may enter into a written agreement to change the fiscal year for purposes of this article. If the fund and municipality enter into an agreement described by this section, the parties shall, in the agreement, adjust the provisions of Sections 13A through 13F of this article to reflect that change.

Sec. 1C. Alternative retirement plans.

(a) In this section, "salary-based benefit plan" means a retirement plan provided by the fund under this article that provides member benefits calculated in accordance with a formula that is based on multiple factors, one of which is the member's salary at the time of the member's retirement.

(b) Notwithstanding any other law, including Section 13G of this article, the board and the municipality may enter into a written agreement to offer an alternative retirement plan or plans, including a cash balance retirement plan or plans, if both parties consider it appropriate.

(c) Notwithstanding any other law, including Section 13G of this article, if, beginning with the final risk sharing valuation study prepared under Section 13B of this article on or after July 1, 2021, either the funded ratio of the fund is less than 65 percent as determined in the final risk sharing valuation study without making any adjustments under Section 13E or 13F of this article, or the funded ratio of the fund is less than 65 percent as determined in a revised and restated risk sharing valuation study prepared under Section 13B(a)(7) of this article, the board and the municipality shall, as soon as practicable but not later than the 60th day after the date the determination is made:

- (1) enter into a written agreement to establish a cash balance retirement plan that complies with Section 1D of this article; and
- (2) require each firefighter first hired by the municipality on or after the 90th day after the date the cash balance retirement plan is established to participate in the cash balance retirement plan established under this subsection instead of participating in the salary-based benefit plan, provided the firefighter would have otherwise been eligible to participate in the salary-based benefit plan.

Sec. 1D. Requirements for certain cash balance retirement plans.

(a) In this section:

- (1) "Cash balance plan participant" means a firefighter who participates in a cash balance retirement plan.
- (2) "Cash balance retirement plan" means a cash balance retirement plan established by written agreement under Section 1C(b) or 1C(c) of this article.
- (3) "Interest" means the interest credited to a cash balance plan participant's notional account, which may not:
 - (A) exceed a percentage rate equal to the cash balance retirement plan's most recent five fiscal years' smoothed rate of return; or
 - (B) be less than zero percent.
- (4) "Salary-based benefit plan" has the meaning assigned by Section 1C of this article.

(b) The written agreement establishing a cash balance retirement plan must:

- (1) provide for the administration of the cash balance retirement plan;
- (2) provide for a closed amortization period not to exceed 20 years from the date an actuarial gain or loss is realized;
- (3) provide for the crediting of municipal and cash balance plan participant contributions to each cash balance plan participant's notional account;
- (4) provide for the crediting of interest to each cash balance plan participant's notional account;

- (5) include a vesting schedule;
- (6) include benefit options, including options for cash balance plan participants who separate from service prior to retirement;
- (7) provide for death and disability benefits;
- (8) allow a cash balance plan participant who is eligible to retire under the plan to elect to:

- (A) receive a monthly annuity payable for the life of the cash balance plan participant in an amount actuarially determined on the date of the cash balance plan participant's retirement based on the cash balance plan participant's accumulated notional account balance annuitized in accordance with the actuarial assumptions and actuarial methods established in the most recent actuarial experience study conducted under Section 13D of this article, except that the assumed rate of return applied may not exceed the fund's assumed rate of return in the most recent risk sharing valuation study; or

- (B) receive a single, partial lump-sum payment from the cash balance plan participant's accumulated notional account balance and a monthly annuity payable for life in an amount determined in accordance with Paragraph (A) of this subdivision based on the cash balance plan participant's notional account balance after receiving the partial lump-sum payment; and

- (9) include any other provision determined necessary by:

- (A) the board and the municipality; or

- (B) the fund for purposes of maintaining the tax-qualified status of the fund under Section 401 of the code.

(c) Notwithstanding any other law, including Section 13 of this article, a firefighter who participates in a cash balance retirement plan:

- (1) subject to Subsection (d) of this section, is not eligible to be a member of and may not participate in the fund's salary-based benefit plan; and

- (2) may not accrue years of participation or establish service credit in the salary-based benefit plan during the period the firefighter is participating in the cash balance retirement plan.

(d) A cash balance plan participant is considered a member for purposes of Sections 13A through 13H of this article.

(e) At the time the cash balance retirement plan is implemented, the employer normal cost rate of the cash balance retirement plan may not exceed the employer normal cost rate for the salary-based benefit plan.

Sec. 1E. Conflict of law.

To the extent of a conflict between this article and any other law, this article prevails.

Sec. 2. Fund and board of trustees.

(a) A firefighters' relief and retirement fund is established in each incorporated municipality that has a population of at least 1,600,000 and a fully paid fire department.

(b) The board of trustees of the fund shall be known as the "(name of municipality) Firefighters' Relief and Retirement Fund Board of Trustees" and the fund shall be known as the "(name of municipality) Firefighters' Relief and Retirement Fund." The board consists of 10 trustees, including:

- (1) the mayor or an appointed representative of the mayor;
- (2) the director of finance or the director of finance's designee of the municipality or, if there is not a director of finance, the highest ranking employee of the municipality, excluding elected officials, with predominately financial responsibilities, as determined by the mayor, or that employee's designee;
- (3) five firefighters who are members of the fund;
- (4) one person who is a retired firefighter and a member of the fund with at least 20 years of participation; and
- (5) two persons, each of whom is a registered voter of the municipality, has been a resident of the municipality for at least one year preceding the date of initial appointment, and is not a municipal officer or employee.

(c) To serve as a trustee under Subsection (b)(3) of this section, a person must be elected by ballot of the firefighters who are members of the fund. That election shall be held during the last quarter of the year preceding the January in which the term of a trustee occupying one of those positions expires. The trustee serves a term of three years. Three of the trustees described under Subsection (b)(3) of this section shall be elected from the suppression division of the fire department. One of the trustees from the suppression division must have the rank of firefighter or engineer/operator, and the position on the board to which that trustee is elected is designated as Position I. One of the trustees from the suppression division must have the rank of captain or senior captain, and the position on the board to which that trustee is elected is designated as Position II. One of the trustees from the suppression division must have the rank of district chief, deputy chief, or assistant chief, and the position on the board to which that trustee is elected is designated as Position III. One of the trustees described under Subsection (b)(3) of this section shall be elected from the fire prevention division, and the position on the board to which that trustee is elected is designated as Position IV. One of the trustees described under Subsection (b)(3) of this section shall be elected from the fire alarm operators division or the fire department repair division, and the position on the board to which that trustee is elected is designated as Position V.

(d) To serve as a trustee under Subsection (b)(4) of this section, a person must be elected by ballot of those retired members with at least 20 years of participation in the fund. The election

shall be held during the last quarter of every third year starting in 1997. The trustee serves a three-year term, starting in January after the trustee is elected.

(e) To serve as a trustee under Subsection (b)(5) of this section, a person must be appointed by the elected members of the board. Each of those trustees serves a staggered term of two years. The appointment or reappointment of one of those trustees shall take place in December of each year.

(f) If a vacancy occurs in an elected position on the board, the vacancy shall be filled in the manner provided in this section for the election of the trustee to that position. The election may occur either at the next following regular election of trustees by members of the fire department or in a special election called by the board. If a vacancy occurs in a position appointed by the elected trustees of the board, that position shall be filled by a vote of the elected trustees of the board. A trustee who is elected or selected to fill a vacancy holds office for the unexpired term of the trustee who vacated that position.

(g) Each trustee of the board shall, at the first board meeting following the trustee's most recent election or appointment, take an oath of office that the trustee will diligently and honestly administer the affairs of the fund and that the trustee will not knowingly violate or willingly permit this article to be violated.

(h) The board shall annually elect from among the trustees a chair, a vice chair, and a secretary.

(h-1) The board may form a standing or ad hoc committee composed of any number of trustees of the board to further administration of the fund. A committee composed of all the trustees of the board:

(1) may be established only by order of the board, fund rule, or policy; and

(2) has the same power as the board to take final action, including the power to issue orders on matters within the scope of the committee's authority as defined by applicable law, rule, or policy.

(h-2) If the board establishes a pension benefits committee under Subsection (h-1) of this section, that committee, even if it is composed of fewer than all the trustees of the board, may deliberate and act in place of the board regarding each application for benefits submitted to the fund by a member or the member's survivor. Final action of a pension benefits committee on an application for benefits is binding, subject only to any right of appeal to the board under law, rule, or policy at the time the application is filed. Except to the extent the final action of a pension benefits committee may be appealed to the board, the final action of the pension benefits committee on an application for benefits constitutes the final action of the board, including for purposes of filing an appeal to a district court under Section 12 of this article.

(i) A trustee of the board may not receive compensation for service on the board.

(j) Six trustees of the board constitute a quorum to transact business of the board or of any committee composed of all the trustees of the board. An order of the board or a committee must be made by vote recorded in the minutes of the proceedings of the board or committee. Each

decision of the board in a matter under the board's jurisdiction is final and binding as to each affected member and beneficiary, subject only to the rights of appeal specified by this article.

(k) The board shall receive, manage, and disburse the fund for the municipality and shall hear and determine applications for retirement and claims for disability and designate the beneficiaries or persons entitled to participate as provided by this article.

(l) The board shall hold regular monthly meetings at a time and place as the board by resolution designates and may hold special meetings on call of the chair as the chair determines is necessary, keep accurate minutes of board meetings and records of board proceedings, keep separate from all other municipal funds all money for the use and benefit of the fund, and keep a record of claims, receipts, and disbursements. A disbursement from the fund may be made in accordance with procedures established by the board. The municipality shall allow municipal employees who are board trustees to promptly attend all board and committee meetings. Each board trustee who is an employee of the municipality shall provide the municipality with reasonable notice of the trustee's required attendance at regularly scheduled board and committee meetings. The municipality shall allow board trustees the time required to travel to and attend educational workshops and legislative hearings and meetings regarding proposed amendments to this article if attendance is consistent with a board trustee's duty to the board. The municipality may not use the trustee's attendance or travel related to attendance described by this subsection to reduce or withhold the wages that the trustee would otherwise earn. The board may reimburse from the fund the municipality for costs incurred by the municipality for allowing a trustee's attendance under this subsection.

(m) The municipality shall provide full and timely information to the board on matters relating to the hiring of new firefighters, compensation of members, members' deaths or terminations of service, and such other information concerning firefighters as is reasonably required by the board, from time to time, for the board to administer the fund and provide benefits properly.

(n) The board shall, not later than January 31 of each year, provide to the person described by Subsection (b)(2) of this section a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of fund administration, during the preceding fiscal year of the fund, and shall provide other reports and statements or existing financial information concerning the fund as from time to time may be required or requested by the person described by Subsection (b)(2) of this section.

(o) The secretary of the board shall, not later than the seventh day after the date of each board meeting, forward true copies of the minutes of the meeting to each fire station and to each division of the fire department.

(p) The board shall manage the fund according to the terms and purposes of this article and all applicable sections of the code and has the powers necessary to accomplish that purpose, including the power to:

(1) adopt for the administration of the fund written rules, policies, and procedures not inconsistent with this article;

- (2) interpret and construe this article and any summary plan descriptions or benefits procedures, except that each construction must meet any qualification requirements established under Section 401 of the code;
- (3) correct any defect, supply any omission, and reconcile any inconsistency that appears in this article in a manner and to the extent that the board considers expedient to administer this article for the greatest benefit of all members;
- (4) select, employ, and compensate employees the board considers necessary or advisable in the proper and efficient administration of the fund;
- (5) determine all questions, whether legal or factual, relating to eligibility for participation, service, or benefits or relating to the administration of the fund to promote the uniform administration of the fund for the benefit of all members;
- (6) establish and maintain records necessary or appropriate to the proper administration of the fund; and
- (7) compel witnesses to attend and testify before the board concerning matters related to the operation of this article in the same manner provided for taking of testimony before notaries public.

(p-1) A rule, policy, or procedure adopted by the board under Subsection (p)(1) of this section is final and binding with respect to any matter within the board's jurisdiction and authority.

(q) The chair may administer oaths to witnesses.

(r) The board shall maintain at the offices of the fund each rule, policy, or procedure adopted under this section and shall deliver to the person described by Subsection (b)(2) of this section a copy of each adopted rule, policy, or procedure.

(s) Title 9, Property Code, does not apply to the fund.

(t) The officers and employees of the municipality are fully protected and free of liability for any action taken or omission made or any action or omission suffered by them in good faith, objectively determined, in the performance of their duties related to the fund. The protection from liability provided by this subsection is cumulative of and in addition to any other constitutional, statutory, or common law official or governmental immunity, defense, and civil or procedural protection provided to the municipality as a governmental entity and to a municipal official or employee as an official or employee of a governmental entity. Except for a waiver expressly provided by this article, this article does not grant an implied waiver of any immunity.

Sec. 2A. Qualifications of municipal actuary.

(a) An actuary hired by the municipality for purposes of this article must be an actuary from a professional service firm who:

- (1) is not already engaged by the fund or any other pension system authorized under Article 6243g-4, Revised Statutes, or Chapter 88 (H.B. 1573), Acts of the 77th

Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes), to provide actuarial services to the fund or pension system, as applicable;

(2) has a minimum of 10 years of professional actuarial experience; and

(3) is a fellow of the Society of Actuaries or a member of the American Academy of Actuaries and who, in carrying out duties for the municipality, has met the applicable requirements to issue statements of actuarial opinion.

(b) Notwithstanding Subsection (a) of this section, the municipal actuary does not need to meet any greater qualifications than those required by the board for the fund actuary.

Sec. 2B. Report on investments by independent investment consultant.

At least once every three years, the board shall hire an independent investment consultant to conduct a review of fund investments and submit a report to the board and the municipality concerning the review or demonstrate in the fund's annual financial report that the review was conducted. The independent investment consultant shall review and report on at least the following:

(1) the fund's compliance with its investment policy statement, ethics policies, including policies concerning the acceptance of gifts, and policies concerning insider trading;

(2) the fund's asset allocation, including a review and discussion of the various risks, objectives, and expected future cash flows;

(3) the fund's portfolio structure, including the fund's need for liquidity, cash income, real return, and inflation protection and the active, passive, or index approaches for different portions of the portfolio;

(4) investment manager performance reviews and an evaluation of the processes used to retain and evaluate managers;

(5) benchmarks used for each asset class and individual manager;

(6) an evaluation of fees and trading costs;

(7) an evaluation of any leverage, foreign exchange, or other hedging transaction; and

(8) an evaluation of investment-related disclosures in the fund's annual reports.

Sec. 3. Other powers of the board.

(a) If the board determines that there is a surplus of funds in an amount exceeding the current demands on the fund, the board may invest the surplus in the manner provided by Chapter 802, Government Code.

(b) The board may employ persons to perform any investment, administrative, legal, medical, accounting, clerical, or other service the board considers appropriate, including:

- (1) a certified public accountant or firm of certified public accountants to perform an audit of the fund at times and intervals the board considers necessary;
- (2) a professional investment manager or firm of managers as provided by Section 802.204, Government Code;
- (3) an actuary or actuarial firm at times and for purposes the board considers necessary or appropriate;
- (4) an attorney or firm of attorneys to advise, assist, or represent the board in any legal matter relating to the fund, including litigation involving matters under this article; or
- (5) a physician to examine a firefighter before the firefighter becomes a member of the fund or to examine a member or beneficiary applying for or receiving a disability pension or survivor benefit.

(c) A fee incurred in connection with a service or person employed under Subsection (b) of this section may be paid from the fund, except that the costs of audits under Subsection (b)(1) of this section may be paid from the fund only if the municipality does not pay that cost.

(d) The board may have an actuarial valuation performed each year, and for determining the municipality's contribution rate as provided by Section 13A of this article, the board may adopt a new actuarial valuation each year.

(e) In addition to any other remedy the board has, including any right of set-off from future benefits, the board may recover by civil action from any offending party or from the party's surety money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board for the use and benefit of the fund.

(f) On written request from the chair, the municipal attorney shall represent the board or the fund in any legal matter, including litigation. The municipal attorney is not entitled to compensation from the fund for providing that representation.

(g) The board may, from fund assets, purchase from an insurer licensed to do business in this state insurance to:

- (1) provide for legal defense of the fund;
- (2) cover liabilities and losses of the fund;
- (3) cover any other insurable risk to the fund; and
- (4) provide for the legal defense of or indemnify and hold harmless the trustees of the board and employees of the fund from the effects and consequences of their acts, errors, omissions, or other conduct within the scope of their duties as trustees or employees, whether the acts, errors, omissions, or other conduct is proven or merely alleged.

(g-1) The board may use fund assets to provide insurance coverage comparable to that provided by insurers under Subsection (g) of this section by entering into a collective pool providing

governmental entities of this state with self-insurance coverage, including coverage authorized by Chapter 791 or 2259, Government Code, or Chapter 119, Local Government Code. This article does not limit the ability of the board to provide any type of group insurance or self-insurance coverage in a pool of governmental entities for fund employees and their beneficiaries as a benefit of employment.

(g-2) If insurance or pooled governmental self-insurance coverage is unavailable, insufficient, inadequate, or not in effect, the board may indemnify a board trustee or employee for liability imposed as damages and for reasonable costs and expenses incurred by that individual in defense of an alleged act, error, or omission committed in the individual's official capacity or within the scope of what the board trustee or employee believed in good faith, at the time, to be the board trustee's or employee's official capacity. The board may not indemnify a board trustee or employee for the amount of a loss that results from the board trustee's or employee's wilful and malicious misconduct or gross negligence.

(g-3) The board may establish a self-insurance fund to pay claims for the indemnification of board trustees or employees under Subsection (g-2) of this section. The board shall provide that the self-insurance fund must be limited to an amount not to exceed the greater of three percent of the fund assets or \$ 5 million. The self-insurance fund shall be invested in the same manner as other assets of the fund, and all earnings and losses from investing the self-insurance fund shall be credited to the self-insurance fund unless that credit exceeds the limit on the self-insurance fund set by the board or this subsection. Amounts held in the self-insurance fund may not be included in the actuarial valuation for purposes of determining the municipal contribution rate or the assets available to satisfy the actuarial liabilities of the fund to pay service, disability, or death benefits provided by this article. A decision to indemnify or make a reimbursement out of the self-insurance fund must be made by a majority vote of board trustees eligible to vote on the matter. If the proposed indemnification or reimbursement is of a trustee, that trustee may not vote on the matter.

(h) The board may purchase with board funds a life insurance policy from an insurer licensed to do business in this state to cover the amount of lump-sum death benefits that may become payable to a member's eligible survivor or estate. The amount payable under a policy under this subsection on the death of one member may not exceed the amount of the lump-sum death benefits payable under this article. The board shall be the policyholder of any life insurance purchased under this subsection and shall use any proceeds received from the insurer to satisfy any lump-sum death benefits owed under this article.

(i) The board may pay with fund assets the reasonable expenses incurred in providing annual or semiannual meetings of retired members, spouses of retired members, and eligible survivors that facilitate communication regarding benefits paid under this article if the expenses do not materially affect the total assets of the fund. Reasonable expenses may include the purchase of items or services necessary to promote and facilitate these meetings.

(j) The board may pay for with fund assets, and distribute to survivors of deceased firefighters, commemorative flags and similar memorabilia, having a value of \$ 75 or less, to honor service rendered by the firefighters.

(k) The board may accept gifts and donations to the fund. The gifts and donations shall be added to the fund for the use of the fund.

(l) The trustees, executive director, and employees of the fund are fully protected and free of liability for any action taken or omission made or any action or omission suffered by them in good faith, objectively determined, in the performance of their duties for the fund. The protection from liability provided by this subsection is cumulative of and in addition to any other constitutional, statutory, or common law official or governmental immunity, defense, and civil or procedural protection provided to the fund as a governmental entity and to a fund trustee or employee as an official or employee of a governmental entity. Except for a waiver expressly provided by this article, this article does not grant an implied waiver of any immunity.

(m) The board, or a committee of the board sitting in review of medical or psychiatric records, may consider the medical or psychiatric records of multiple individual applicants for disability benefits within a single closed session under Section 551.078, Government Code, but any action on an application shall be taken on an individual basis.

(n) On the reported death of a member, the fund or an authorized representative of the fund may obtain the death certificate or the pending death certificate directly from the issuing examiner or governmental agency without the prior notification or confirmation that otherwise may be required under law to expedite the issuance of death benefits from the fund to survivors in need of those benefits.

Sec. 3A. Certain alterations by local agreement.

(a) Except as provided by Subsection (b) of this section, the board is authorized, on behalf of the members or beneficiaries of the fund, to alter benefit types or amounts, the means of determining contribution rates, or the contribution rates provided under this article if the alteration is included in a written agreement between the board and the municipality. An agreement entered into under this section:

(1) must:

(A) if the agreement concerns benefit increases, other than benefit increases that are the result of Section 13E of this article, adhere to the processes and standards set forth in Section 10 of this article; and

(B) operate prospectively only; and

(2) may not, except as provided by Sections 13A through 13F of this article, have the effect or result of increasing the unfunded liability of the fund.

(b) In a written agreement entered into between the municipality and the board under this section, the parties may not:

- (1) alter Sections 13A through 13F of this article, except and only to the extent necessary to comply with federal law;
- (2) increase the assumed rate of return to more than seven percent per year;
- (3) extend the amortization period of a liability layer to more than 30 years from the first day of the fiscal year beginning 12 months after the date of the risk sharing valuation study in which the liability layer is first recognized; or
- (4) allow a municipal contribution rate in any year that is less than or greater than the municipal contribution rate required under Section 13E or 13F of this article, as applicable.

(c) If the board is directed or authorized in Sections 13A through 13F of this article to effect an increase or decrease to benefits or contributions, this article delegates the authority to alter provisions concerning benefits and contributions otherwise stated in this article in accordance with the direction or authorization only to the extent the alteration is set forth in an order or other written instrument and is consistent with this section, the code, and other applicable federal law and regulations. The order or other written instrument must be included in each applicable risk sharing valuation study under Section 13B or 13C of this article, as applicable, adopted by the board, and published in a manner that makes the order or other written instrument accessible to the members.

Sec. 4. Service pension benefits.

(a) A member who terminates active service for any reason other than death is entitled to receive a service pension provided by this section if the member was:

- (1) hired as a firefighter before the year 2017 effective date, including a member who was hired before the year 2017 effective date and who involuntarily separated from service but has been retroactively reinstated in accordance with an arbitration, civil service, or court ruling, at the age at which the member attains 20 years of service; and
- (2) except as provided by Subdivision (1) of this subsection and subject to Subsection (b-2) of this section, hired or rehired as a firefighter on or after the year 2017 effective date, when the sum of the member's age in years and the member's years of participation in the fund equals at least 70.

(b) Except as otherwise provided by Subsection (d) of this section, the monthly service pension for a member described by:

- (1) Subsection (a)(1) of this section is equal to the sum of:
 - (A) the member's accrued monthly service pension based on the member's years of participation before the year 2017 effective date, determined under the law in effect on the date immediately preceding the year 2017 effective date;
 - (B) 2.75 percent of the member's average monthly salary multiplied by the member's years of participation on or after the year 2017 effective date, for each

year or partial year of participation of the member's first 20 years of participation; and

(C) two percent of the member's average monthly salary multiplied by the member's years of participation on or after the year 2017 effective date, for each year or partial year of participation on or after the year 2017 effective date that occurred after the 20 years of participation described by Paragraph (B) of this subdivision; and

(2) Subsection (a)(2) of this section is equal to the sum of:

(A) 2.25 percent of the member's average monthly salary multiplied by the member's years or partial years of participation for the member's first 20 years of participation; and

(B) two percent of the member's average monthly salary multiplied by the member's years or partial years of participation for all years of participation that occurred after the 20 years of participation described by Paragraph (A) of this subdivision.

(b-1) For purposes of Subsection (b) of this section, partial years shall be computed to the nearest one-twelfth of a year.

(b-2) A member's monthly service pension under Subsection (a)(2) of this section may not exceed 80 percent of the member's average monthly salary.

(c) A member who terminated active service before November 1, 1997, and who had completed at least 20 years of participation on the effective date of termination of service is entitled on retirement to receive a monthly service pension in the amount provided under the law in effect on the effective date of that retirement, unless a subsequent benefit increase is expressly made applicable to that member.

(d) The total monthly benefit payable to a retired or disabled member, other than a deferred retiree or active member who has elected the DROP under Section 5(b) of this article, or payable to an eligible survivor of a deceased member as provided by Section 7(a) or 7(b) of this article, shall be increased by the following amounts: by \$ 100, beginning with the monthly payment made for July 1999; by \$ 25, beginning with the monthly payment made for July, 2000; and by \$ 25, beginning with the monthly payment made for July 2001. These additional benefits may not be increased under Section 11(c), (c-1), or (c-2) of this article.

Sec. 5. Deferred retirement option plan.

(a) A member who is eligible to receive a service pension under Section 4(a)(1) of this article and who remains in active service may elect to participate in the deferred retirement option plan provided by this section. A member who is eligible to receive a service pension under Section 4(a)(2) of this article may not elect to participate in the deferred retirement option plan provided by this section. On subsequently terminating active service, a member who elected the DROP may apply for a monthly service pension under Section 4 of this article, except that the effective

date of the member's election to participate in the DROP will be considered the member's retirement date for determining the amount of the member's monthly service pension. The member may also apply for any DROP benefit provided under this section on terminating active service. An election to participate in the DROP, once approved by the board, is irrevocable.

(a-1) The monthly benefit of a DROP participant who has at least 20 years of participation on the year 2017 effective date is increased at retirement by two percent of the amount of the member's original benefit for every full year of participation in the DROP by the member for up to 10 years of participation in the DROP. For a member's final year of participation, but not beyond the member's 10th year in the DROP, if a full year of participation is not completed, the member shall receive a prorated increase of 0.166 percent of the member's original benefit for each month of participation in that year. An increase provided by this subsection does not apply to benefits payable under Subsection (l) of this section. An increase under this subsection is applied to the member's benefit at retirement and is not added to the member's DROP account. The total increase under this subsection may not exceed 20 percent for 10 years of participation in the DROP by the member.

(b) A member may elect to participate in the DROP by complying with the election process established by the board. The member's election may be made at any time beginning on the date the member has completed 20 years of participation in the fund and is otherwise eligible for a service pension under Section 4(a)(1) of this article. Beginning on the first day of the month following the month in which the member makes an election to participate in the DROP, subject to board approval, and ending on the year 2017 effective date, amounts equal to the deductions made from the member's salary under Section 13(c) of this article shall be credited to the member's DROP account. Beginning after the year 2017 effective date, amounts equal to the deductions made from the member's salary under Section 13(c) of this article may not be credited to the member's DROP account.

(b-1) On or after the year 2017 effective date, an active member may not participate in the DROP for more than 13 years. If a DROP participant remains in active service after the 13th anniversary of the effective date of the member's DROP election:

- (1) subsequent deductions from the member's salary under Section 13(c) of this article, except for unused leave pay, may not be credited to the member's DROP account; and
- (2) the account shall continue to be credited with earnings in accordance with Subsection (d) of this section.

(b-2) For a member who is a DROP participant, the fund shall credit to the member's DROP account, in accordance with Section 13(c-1) of this article, the amount of unused leave pay otherwise payable to the member and received as a contribution to the fund from the municipality.

(c) After a member's DROP election becomes effective, an amount equal to the monthly service pension the member would have received under Section 4 of this article, if applicable, had the member terminated active service on the effective date of the member's DROP election shall be

credited to a DROP account maintained for the member. That monthly credit to the member's DROP account shall continue until the earlier of the date the member terminates active service or the 13th anniversary of the date of the first credit to the member's DROP account.

(d) A member's DROP account shall be credited with earnings at an annual rate equal to 65 percent of the compounded average annual return earned by the fund over the five years preceding, but not including, the year during which the credit is given. Notwithstanding the preceding, however, the credit to the member's DROP account shall be at an annual rate of not less than 2.5 percent, irrespective of actual earnings.

(d-1) Earnings credited to a member's DROP account under Subsection (d) of this section shall be computed and credited at a time and in a manner determined by the board, except that earnings shall be credited not less frequently than once in each 13-month period and shall take into account partial years of participation in the DROP.

(d-2) A member may not roll over accumulated unused sick or vacation time paid to the member as a lump-sum payment after termination of active service into the member's DROP account.

(e) A member who terminates active service after participating in the DROP is entitled to receive, in addition to the member's service pension under Section 4 of this article, a benefit equal to the balance of the member's DROP account.

(e-1) In lieu of receiving a lump-sum payment on termination from active service, a retired member who has been a DROP participant or, if termination from active service was due to the DROP participant's death, the surviving spouse of the DROP participant may elect to leave the retired member's DROP account with the fund and receive earnings credited to the DROP account in the manner described by Subsection (d) of this section.

(f) In lieu of a single lump-sum payment, a member may elect to receive partial payments from the member's DROP account for each calendar year, in an amount elected by the member. The board may establish procedures concerning partial payments, including limitations on timing and frequency of those payments. A member who elects partial payments may, at any time, elect to receive the member's entire remaining DROP account balance in a single lump-sum payment.

(g) If a member elects partial payments, for periods after a member terminates active service and before the member's DROP account is completely distributed, the member's DROP account shall be credited with earnings of the fund as computed under Subsection (d) of this section.

(h) An election by a member concerning single lump-sum or partial payments as provided by Subsection (e) or (f) of this section must satisfy the requirements of Section 401(a)(9) of the code. All distributions and changes in form of distribution must be made in a manner and at a time that comply with that provision of the code.

(i) The day immediately before the date the DROP participant's election becomes effective is the last day used for purposes of computing and providing service pension benefits under Section 4 of this article or for purposes of computing and providing death benefits under Section 7 of this article. A salary earned or additional years of participation completed after the member's DROP

election becomes effective may not be considered in the computation of retirement or death benefits, except for the limited purpose of percentage increases provided under Subsection (a) of this section.

(j) If a DROP participant dies before complete distribution of the member's DROP account has been made, the member's DROP account balance shall be distributed to the member's eligible beneficiaries, determined as follows:

(1) if the member is survived by a spouse who was the member's spouse on the date the member's DROP election became effective and one or more eligible children, one-half of the member's DROP account balance shall be paid to that eligible spouse, and the remaining one-half shall be divided equally among the member's eligible children;

(2) if the member is survived by a spouse described by Subdivision (1) of this subsection, but not by an eligible child, the member's entire DROP account balance shall be paid to the surviving spouse;

(3) if the member is survived by one or more eligible children, but not by a spouse described by Subdivision (1) of this subsection, the member's DROP account balance shall be divided equally among the eligible children;

(4) if the member is not survived by a spouse described by Subdivision (1) of this subsection or an eligible child, the member's DROP account balance shall be divided equally among the member's eligible parents;

(5) if the member is not survived by a spouse described by Subdivision (1) of this subsection, an eligible child, or an eligible parent, the member's DROP account balance shall be distributed in accordance with the member's beneficiary designation filed with the board or, if the member has failed to file a valid beneficiary designation, to the member's estate;

(6) if a member's spouse described by Subdivision (1) of this subsection was not married to the member on the date the member's DROP election became effective, the spouse shall receive a reduced benefit equal to the benefit otherwise payable to the surviving spouse under this subsection, multiplied by the percentage of the period between the member's DROP election and the date the member left active service during which the spouse and the member were married, and the amount by which the spouse's benefit is reduced shall be divided among any other eligible survivors as if the member did not have an eligible spouse or, if there are no eligible survivors, distributed in accordance with the member's beneficiary designation filed with the board, or if the member failed to file a valid beneficiary designation, to the member's estate; and

(7) if the conditions described by Subdivision (1), (2), or (6) of this subsection exist, the surviving spouse may elect to maintain the DROP account with the fund in the same manner described by Subsections (e), (f), and (g) of this section.

(j-1) Only for the purpose of distributing a member's DROP account under Subsection (j) of this section, a person who is designated a beneficiary adult child in a valid beneficiary designation filed by the member with the board is considered an eligible child. A designation under this subsection is distinct from the member's beneficiary designation under Subsection (j)(5) of this section.

(k) An eligible beneficiary's share of a deceased member's DROP account shall be distributed as soon as administratively practicable after the member's death in the form of a single lump-sum payment, unless the surviving spouse makes the election permitted by Subsection (j)(7) of this section. All distributions to beneficiaries under this subsection must be made in a manner and at a time that comply with Section 401(a)(9) of the code.

(l) A member who participates in the DROP is ineligible for disability benefits described by Section 6 of this article, except the benefits described by Section 6(c). If a member who has a disability described by Section 6(c) of this article is a DROP participant, the disability benefit provided by Section 6(c)(1) shall be paid to the member, as a monthly pension benefit, in addition to payments from the DROP account balance. If a member who dies under the conditions described by Section 7(c) of this article is a DROP participant at the time of death or disability resulting in death, the benefit provided by Section 7(c) shall be paid to the member's eligible survivors, as a monthly pension benefit, in addition to payments from the DROP account balance.

(m) A DROP participant with a break in service may receive service credit within DROP for days worked after the regular expiration of the maximum DROP participation period prescribed by this section. The service credit shall be limited to the number of days in which the participant experienced a break in service or the number of days required to constitute 13 years of DROP participation, whichever is smaller. A retired member who previously participated in the DROP and who returns to active service is subject to the terms of this section in effect at the time of the member's return to active service.

(n) After August 31, 2000, the board may set a date after which additional members will not be allowed to elect to participate in the DROP. A member whose election to participate in the DROP becomes effective before a deadline established by the board is entitled to continue participating in the DROP.

(o) A member who has made a DROP election is not classified as retired, eligible to be paid, or eligible to accrue or to receive any benefit that is accrued or received by a member who has terminated active service or by the eligible survivors of deceased members unless the member who has made the DROP election has terminated active service.

(p) A member participating in the DROP who was qualified to make a DROP election before the actual date of the member's election may elect to have the member's DROP account recomputed by participating in a Back-DROP. Under a Back-DROP election, the member's account balance is equal to the amount that the account would have had if the member had elected to participate in the DROP on an earlier date chosen by the member. The Back-DROP date chosen by the member may not be earlier than the later of the date that is three years before the date the

member elected to participate in the DROP, or September 1, 1995. The member's choice of a Back-DROP date is irrevocable, except as provided by Subsection (r) of this section.

(q) A member may revoke the member's Back-DROP election by notifying the fund in writing not later than the earlier of:

- (1) the date the member leaves active service; or
- (2) the 10th business day after the date the member signs an application form for a Back-DROP.

(r) A member may revoke the date chosen under a Back-DROP election and choose an earlier Back-DROP date only if:

- (1) the first date the member chooses is not the earliest date permitted under Subsection (p) of this section; and
- (2) the board determines that the member's injury or illness has caused the member to be separated from service earlier than the member anticipated.

Sec. 5A. Post-retirement option plan.

(a) The following persons may elect to participate in the post-retirement option plan provided by this section:

- (1) a member who terminates active service after participating in the DROP and who is eligible to receive a service pension or other taxable benefits under Section 5 of this article;
- (2) a retired member, whether or not that member was a DROP participant, who is eligible to receive a service pension or other taxable benefits under Section 4 of this article; or
- (3) a surviving spouse of a member who elects and is eligible to participate in the PROP under Subsection (f) of this section.

(b) A PROP participant may elect to have all or part of the amount that the participant would otherwise receive as a monthly service pension or other taxable benefits under this article, less any amount the board determines is required to pay the participant's share of group medical insurance costs, credited to the participant's PROP account. The participant's PROP account shall be credited with hypothetical earnings in the same manner as the amounts in a member's DROP account under Section 5(d) of this article. At any time, a PROP participant may stop the amounts being credited to the participant's PROP account and elect to resume receiving the participant's monthly service pension or other taxable benefits under this article.

(c) A member or surviving spouse who elects to participate in the PROP shall comply with the PROP election process established by the board.

(d) Subject to rules and procedures adopted by the board, a PROP participant may elect to receive partial payments from the participant's PROP account in an amount determined by the

participant. The board may establish rules and procedures concerning partial payments, including limitations on timing and frequency of those payments. A PROP participant who elects partial payments may, at any time, elect to receive the PROP participant's entire remaining PROP account balance in a single lump-sum payment. If, at any time after the initial credit to the PROP account, a participant's PROP account balance becomes zero, the account closes and the participant's participation in the PROP ceases. A person whose PROP account has been closed because of a zero balance is not eligible to again participate in the PROP.

(e) An election by a member or surviving spouse to receive a single lump-sum payment or partial payments under Subsection (d) of this section must satisfy the requirements of Section 401(a)(9) of the code. All distributions and changes in the form of distribution must be made in a manner and at a time that comply with that section of the code.

(f) The board by rule or policy may permit a member's surviving spouse to elect to participate in the PROP by choosing either or both of the following options:

- (1) continuing a deceased member's PROP account; or
- (2) establishing a PROP account in which to receive credits from all or part of the surviving spouse's survivor benefits.

(g) A surviving spouse PROP participant and the participant's PROP account are subject to this section and any additional rules the board may adopt relating to PROP accounts and participants generally or to surviving spouse PROP accounts and participants particularly. The board may, by rule, further restrict or define, through the establishment of reasonable categories, who is a surviving spouse of a member for purposes of this section.

(h) If a member who is a PROP participant dies before complete distribution of the participant's PROP account has been made, the participant's PROP account balance shall be distributed in the same manner as a DROP account balance is distributed under Sections 5(j), (j-1), and (k) of this article, except for amounts subject to a surviving spouse's election under Subsection (f) of this section that results in the nondistribution from the plan of all or part of the deceased participant's PROP account.

(i) Only benefits that are taxable under the code may be credited to a PROP account. Nontaxable disability benefits or other nontaxable benefits, including the nontaxable part of any benefit, may not be credited to a PROP account.

(j) The board may set a date after which additional members or surviving spouses will not be allowed to elect to participate in the PROP.

(k) The board may set a date after which the crediting of additional benefits of a member or a surviving spouse to a PROP account is not allowed.

(l) The board by rule or policy may limit the number of distribution transactions for all PROP participants or for any category of PROP participants.

(m) The board by rule or policy may establish a minimum dollar amount allowed for crediting of benefit amounts to a PROP account.

(n) The board may adopt rules, policies, or procedures that the board determines are necessary or desirable to implement or administer this section.

(o) Notwithstanding any other provision of this article, on or after the year 2017 effective date:

(1) a PROP participant may not have any additional amounts that the participant would otherwise receive as a monthly service pension or other benefits under this article credited to the participant's PROP account; and

(2) a person, including a member or surviving spouse, may not elect to participate in the PROP.

Sec. 6. Disability pension benefits.

(a) If the board determines that a member has suffered an on-duty disability, the member is entitled to an on-duty disability pension as provided by this section in lieu of any other benefit under this article.

(b) If the board determines that a member is not capable of performing the usual and customary duties of the member's classification or position because of the member's on-duty disability, the member is entitled to receive a monthly disability pension, beginning after the effective date of the member's termination of active service, in an amount equal to the greater of:

(1) 50 percent of the member's average monthly salary; or

(2) the service pension the member would have been entitled to receive under Section 4 of this article based on years of participation as of the effective date of the member's termination of active service.

(c) If the board determines that a member is not capable of performing any substantial gainful activity because of the member's on-duty disability, the member is entitled to receive a monthly disability pension, beginning after the effective date of the member's termination of active service, in an amount equal to the greater of:

(1) 75 percent of the member's average monthly salary; or

(2) the service pension the member would have been entitled to receive under Section 4 of this article based on years of participation on the effective date of the member's termination of active service.

(d) If a full-time active member with at least six years of service becomes disabled or dies from heart or lung disease or cancer, and the member successfully passed a physical examination before the claimed disability or death or on beginning employment as a firefighter, and the examination failed to reveal any evidence of the heart or lung disease or cancer, that condition will be presumed to have caused an on-duty disability for purposes of determining eligibility for disability benefits under this section, and the amount of the disability benefit is presumed to

constitute, unless the presumption is rebutted, the pension amount that shall be used to determine the death benefit payable with respect to that member. The on-duty disability presumption may be rebutted only by clear and convincing evidence. Another statutory presumption regarding the cause of illnesses or conditions does not affect any benefit payable under this article.

(e) If the board determines that a member is not capable of performing the usual and customary duties of the member's classification or position because of the member's off-duty disability, the member is entitled to an off-duty disability pension in lieu of any other benefit under this article. If the board makes that determination, the member is entitled to receive a monthly disability pension, beginning after the effective date of the member's termination of active service, in an amount equal to the greater of:

(1) 25 percent of the member's average monthly salary, plus 2-1/2 percent of the member's average monthly salary for each full year of participation in the fund, except that the total monthly disability pension under this subdivision may not exceed 50 percent of the member's average monthly salary; or

(2) the service pension the member would have been entitled to receive under Section 4 of this article based on years of participation on the effective date of the member's termination of active service.

(f) A member is not eligible for an on-duty or off-duty disability pension as provided by this section if the member's on-duty or off-duty disability is a direct and proximate result of a condition that existed on the date the member began membership in the fund. In that event, if the member is not eligible to receive a service pension under Section 4 of this article, the member may elect any deferred pension or refund of contributions for which the member is eligible under Section 8 of this article. A member has a preexisting condition under this subsection if the board determines that the member had:

(1) symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment during the five-year period before the effective date of the member's membership in the fund; or

(2) a condition for which medical advice or treatment was recommended by or received from a physician during the five-year period before the effective date of the member's membership in the fund.

(g) The board shall review, on a case-by-case basis, existing benefit payments to members, and to survivors of deceased members, who retired as a result of a disability with 20 or more years of service under a provision of any predecessor statute previously governing the fund. The review will determine whether the member's disability was an on-duty disability that satisfies the requirements of Subsection (b) or (c) of this section. A determination that a member's disability was an on-duty disability, as described above, will apply only on a prospective basis beginning with January 1 of the calendar year in which the determination is made and will not affect the amount of the member's or survivor's benefits. The board shall make its review and determination under this subsection on the basis of the medical evidence and any other relevant

non-testimonial evidence that was previously submitted in connection with the prior application for benefits, except that if the board finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be adduced and accepted to help make the determination.

(h) A person may not receive an on-duty or off-duty disability pension from the fund unless the person or the person's legal representative files with the board an application for disability benefits, in the form approved by the board, and certificates of the member's disability signed and sworn to by the member and the member's physician or by a physician selected by the board. The board may require other or additional evidence of disability before authorizing payment of disability pension benefits.

(i) The board shall make all determinations concerning benefits under this section in accordance with uniform principles consistently applied on the basis of medical or other evidence that the board determines is necessary or desirable.

Sec. 7. Death benefits.

(a) If a member dies who is eligible to receive a service pension under Section 4 of this article, a disability pension under Section 6 of this article, or a deferred pension under Section 8(a) of this article, or who is receiving those benefits, the member's eligible survivors are entitled to death benefits as follows:

(1) if the member is survived by both an eligible spouse and one or more eligible children, the eligible spouse is entitled to receive a monthly death benefit equal to one-half of the amount the member would have been entitled to receive, and the surviving eligible children are entitled to receive a monthly death benefit equal to the remainder of the amount the member would have been entitled to receive, divided equally among the eligible children;

(2) if the member is not survived by an eligible child, or if at any time after the death of the member an eligible child is not entitled to a benefit, the monthly death benefit to be paid the eligible spouse is equal to the full amount the member would have been entitled to receive;

(3) if the member is not survived by an eligible spouse, or if the member's eligible spouse dies after being entitled to a death benefit under this section, the surviving eligible children are entitled to receive a monthly death benefit equal to the full monthly pension benefit the member would have been entitled to receive, divided equally among the member's eligible children then living; and

(4) if the member is not survived by an eligible spouse or an eligible child, a monthly death benefit equal to the full monthly pension benefit the member would have been entitled to receive shall be divided among the eligible parents of the deceased member.

(b) If a member's eligible spouse was married to the member for less than five years and was not married to the member at the time the member left active service, the eligible spouse shall be

paid a reduced benefit equal to the benefit otherwise payable to the eligible spouse under this section, multiplied by the number of months the eligible spouse was married to the member, and divided by 60 months. Any benefit the eligible spouse may be granted under Section 10A of this article shall be reduced in the same proportion as the reduced benefit provided by this subsection. The amount by which the eligible spouse's benefit is reduced shall be divided among any other eligible survivors as if the member did not have an eligible spouse. This subsection may not be construed to effect any reduction to an eligible spouse of benefits otherwise payable under Section 4(d) of this article.

(c) Notwithstanding any other provision of this section, if a member dies in the course of the performance of the member's duties as a firefighter or suffers an on-duty disability and dies as a result of the bodily injuries that caused the on-duty disability, death benefits based on the member's service shall be computed on the basis of a benefit equal to 100 percent of the deceased member's average monthly salary.

(d) If a member dies after benefit payments have begun or at a time the member could have terminated active service and elected to receive a service pension or deferred pension immediately, the death benefits payable under this section shall begin or continue effective as of the member's date of death. If a member who is not entitled to receive any monthly pension benefit under this article other than a deferred pension under Section 8(a) of this article dies before age 50, any monthly death benefits payable under this section shall begin on the date the deceased member would have reached age 50.

(e) In addition to the monthly death benefit provided under Subsection (a) of this section, if an active member or a member receiving a service pension under Section 4 of this article or a disability pension under Section 6 of this article dies on or after July 1, 1998, the member's eligible survivors are entitled to a one-time \$ 5,000 death benefit, payable as a lump sum as follows:

- (1) if the member is survived by an eligible spouse, the eligible spouse is entitled to receive \$ 5,000;
- (2) if the member is not survived by an eligible spouse, the member's eligible children are entitled to receive \$ 5,000, divided equally among those children;
- (3) if the member is not survived by an eligible spouse or an eligible child, the \$ 5,000 death benefit shall be divided equally among the eligible parents of the deceased member; or
- (4) if the member is not survived by an eligible spouse, an eligible child, or an eligible parent, the \$ 5,000 death benefit shall be paid to the deceased member's estate or to the member's court-approved small estate through its legal representative.

(f) A member in active service who dies, for purposes of Subsection (a) of this section, shall be treated as having become disabled because of the member's cause of death on the date of the member's death.

(g) If a member in active service dies and does not leave an eligible survivor, or the eligible survivors unanimously elect such a benefit in lieu of any other death benefit, a lump-sum benefit shall be paid in an amount equal to the refund, if any, to which the member would have been entitled under Section 8 of this article had the member terminated service on the date of the member's death. That lump-sum benefit shall be paid to the eligible survivors as provided by Subsection (a) of this section or, if there are not any eligible survivors, to the member's designated beneficiary. A member's beneficiary must be designated before the member's death on a form approved by the board. If more than one beneficiary is designated, the benefit shall be divided equally among the beneficiaries unless a different allocation is provided in the designation. If a member fails to properly designate a beneficiary, the benefit provided by this subsection shall be payable to the member's estate or to the member's court-approved small estate through its legal representative on application by the estate or legal representative. Money payable under this subsection may not escheat to the state.

(h) Death benefits are not payable under this article, including benefits to any survivor, based on a member's service if the board determines that the member's death resulted from suicide or attempted suicide that occurred before the member completed two years of participation or that the member's death resulted from a disability arising out of an attempted suicide that occurred before the member completed two years of participation.

(i) A benefit payable under this section to a member's eligible child ceases when the child ceases to be an eligible child.

(j) An eligible spouse is entitled to receive or continue to receive survivor benefits on remarriage, except that a person who is an eligible spouse of more than one member is entitled to receive survivor benefits as the eligible spouse of only the member whose survivor benefits provide the highest benefit to that eligible spouse.

Sec. 8. Deferred pension at age 50; refund of contributions.

(a) On or after the year 2017 effective date, a member who is hired as a firefighter before the year 2017 effective date, including a member who was hired before the year 2017 effective date and who involuntarily separated from service but has been retroactively reinstated in accordance with an arbitration, civil service, or court ruling, terminates active service for any reason other than death with at least 10 years of participation, but less than 20 years of participation, is entitled to a monthly deferred pension benefit, beginning at age 50, in an amount equal to 1.7 percent of the member's average monthly salary multiplied by the amount of the member's years of participation.

(b) In lieu of the deferred pension benefit provided under Subsection (a) of this section, a member who terminates active service for any reason other than death with at least 10 years of participation, but less than 20 years of participation, may elect to receive a lump-sum refund of the member's contributions to the fund with interest computed at five percent, not compounded, for the member's contributions to the fund made before the year 2017 effective date and without interest for the member's contributions to the fund made on or after the year 2017 effective date. A member's election to receive a refund of contributions must be made on a form approved by

the board. The member's refund shall be paid as soon as administratively practicable after the member's election is received.

(c) Except as provided by Subsection (a) of this section, a member who is hired or rehired as a firefighter on or after the year 2017 effective date or a member who terminates employment for any reason other than death before the member has completed 10 years of participation is entitled only to a refund of the member's contributions without interest and is not entitled to a deferred pension benefit under this section or to any other benefit under this article. The member's refund shall be paid as soon as administratively practicable after the effective date of the member's termination of active service.

Sec. 9. Proof of continued disability.

(a) The board may at any time require a person receiving a disability pension or receiving death benefits as a disabled child under this article to undergo a medical examination by a physician appointed or selected by the board for that purpose.

(b) A person retired for disability under Section 6(c) of this article or a person receiving death benefits as a disabled child under Section 7 of this article must file an annual report of employment activities and earnings with the board. The board shall establish the form of the report and the time for filing the report.

(c) The result of the examination, the report by the physician, and the report of employment activities and earnings shall be considered by the board in determining whether the relief in the case shall be continued, increased if less than the maximum provided, decreased, or discontinued. The board may reduce or entirely discontinue all benefits to a person receiving benefits under this article who, after notice from the board, fails to appear for a required medical examination or fails to file the report of employment activities and earnings.

Sec. 10. Nonstatutory benefit increases.

The benefits provided by this article may be increased if:

- (1) an actuary selected by the board who, if an individual, 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 determines that the increase cannot reasonably be viewed as posing a material risk of jeopardizing the fund's ability to pay any existing benefit;
 - (2) a majority of the participating members of the fund vote for the increase by a secret ballot;
 - (3) the increase does not deprive a member, without the member's written consent, of a right to receive benefits that have already become fully vested and matured in a member;
- and

(4) the State Pension Review Board approves the determination by the actuary selected by the board that the increase cannot reasonably be viewed as posing a material risk of jeopardizing the fund's ability to pay any existing benefit.

Sec. 10A. Annual supplemental benefit for certain retired members and eligible survivors.

(a) The board shall pay supplemental benefits under this section to retired members and eligible survivors who are receiving retirement or survivor benefits on June 30 of the year preceding the year in which the supplemental benefits are to be paid. Deferred retirees or survivors of deferred retirees may not receive supplemental benefits under this section.

(b) The board shall pay the supplemental benefits under this section each January.

(c) For purposes of this section, the minimum income level is the federal poverty guideline for a family of five as issued by the United States Department of Health and Human Services, rounded up to the nearest \$ 1,000.

(d) The aggregate supplemental benefit amount is \$ 5 million.

(e) Based on the aggregate supplemental benefit amount under Subsection (d) of this section, the board shall determine the amount of a lump-sum payment for each retired member or eligible survivor.

(f) In determining the lump-sum payment amount, the total number of years since the commencement date of each retired member's or eligible survivor's annual retirement or survivor benefit shall be divided by the total number of years since the commencement date of all retired members' and eligible survivors' annual retirement or survivor benefit to establish a payment percentage for each retired member and eligible survivor. For purposes of this section, benefits provided under Section 4(d) of this article may not be included in a retired member's or eligible survivor's annual retirement or survivor benefit.

(g) The payment percentage of each retired member and eligible survivor shall be multiplied by the aggregate supplemental benefit less the total amount of any payments made under Subsection (i) of this section.

(h) The product of the computation under Subsection (g) of this section determines the lump-sum payment to the retired member or eligible survivor unless the lump-sum payment plus the annual retirement benefit is less than the minimum income level under Subsection (c).

(i) If the lump-sum payment plus the annual retirement benefit is less than the minimum income level under Subsection (c) of this section, the retired member or eligible survivor is entitled to receive an additional payment from the amount determined under Subsection (d) of this section that will cause payments to the recipient to meet but not exceed the minimum income level.

(j) The benefits commencement date for a retired member or the eligible survivor of a retired member is the first day on which the retired member most recently began receiving pension benefits from the fund. The benefits commencement date for an eligible survivor of an active member is the first day of receipt of benefits as an eligible survivor.

(k) Notwithstanding any other provision of this section, if more than one eligible survivor is to receive a supplemental benefit as a result of one deceased person under this section:

(1) only one eligible survivor is considered in computations under this section other than computations under Subdivision (2) of this subsection and as receiving the payments received by all eligible survivors of the one deceased person; and

(2) the amount of payments under this section will be paid to the eligible survivors in the same manner as payments under Sections 7(a) and (b) of this article are made.

(l) All actuarial determinations required under this section must be made by the fund's actuary.

Sec. 10B. Additional lump-sum retirement or death benefit.

(a) The board shall pay the following members a \$ 5,000 lump-sum payment from the fund, in addition to any other benefits, as soon as administratively practicable after the date of the member's retirement:

(1) each member who retires or retired after completing 20 years of service and is eligible to receive service pension benefits under Section 4 of this article; and

(2) each member who retires or retired and is eligible to receive disability benefits under Section 6 of this article.

(b) The board shall pay a \$ 5,000 lump-sum payment from the fund, in addition to any other benefits, to an eligible survivor of a member:

(1) who had not terminated active service; and

(2) who was eligible to receive service pension benefits under Section 4 of this article or disability benefits under Section 6 of this article.

(c) If more than one eligible survivor of one deceased member exists, the amount of each survivor's benefit is determined in the same manner as payment of death benefits is determined under Section 7(e) of this article. The board shall make payments under Subsection (b) of this section as soon as administratively practicable after the date of death of the member of whom each recipient is an eligible survivor.

Sec. 11. General provisions for calculation and payment of benefits.

(a) A member, eligible survivor, or beneficiary of a member is not entitled to receive payments from a fund under more than one section of this article in a particular capacity. However, a person may be entitled to benefits both as a member and as a survivor or beneficiary of another member.

(b) The amounts of all benefits that the member or the member's beneficiaries may become entitled to receive from the fund shall be computed on the basis of the schedule of benefits in effect for the fund at the member's election either on the day the member leaves active service or on the day the member ceases to carry out the member's regular duties as a firefighter, without

adjustment for any subsequent increases of benefits unless those increases are expressly made applicable to previously retired members or their beneficiaries.

(c) Subject to Subsection (c-3) of this section and except as provided by Subsection (c-4) of this section, beginning with the fiscal year ending June 30, 2021, the benefits, including survivor benefits, payable based on the service of a member who has terminated active service and who is or would have been at least 55 years old, received or is receiving an on-duty disability pension under Section 6(c) of this article, or died under the conditions described by Section 7(c) of this article, shall be increased in October of each year by a percentage rate equal to the most recent five fiscal years' smoothed return, as determined by the fund actuary, minus 475 basis points.

(c-1) Subject to Subsection (c-3) of this section and except as provided by Subsection (c-4) of this section, for the fund's fiscal years ending June 30, 2018, and June 30, 2019, the benefits, including survivor benefits, payable based on the service of a member who is or would have been at least 70 years old and who received or is receiving a service pension under Section 4 of this article, received or is receiving an on-duty disability pension under Section 6(c) of this article, or died under the conditions described by Section 7(c) of this article, shall be adjusted in October of each applicable fiscal year by a percentage rate equal to the most recent five fiscal years' smoothed return, as determined by the fund actuary, minus 500 basis points.

(c-2) Subject to Subsection (c-3) of this section and except as provided by Subsection (c-4) of this section, for the fund's fiscal year ending June 30, 2020, members described by Subsection (c-1) of this section shall receive the increase provided under Subsection (c) of this section.

(c-3) The percentage rate prescribed by Subsections (c), (c-1), and (c-2) of this section may not be less than zero percent or more than four percent, irrespective of the return rate of the fund's investment portfolio.

(c-4) Each year after the year 2017 effective date, a member who elects to participate in the DROP under Section 5 of this article may not receive the increase provided under Subsection (c), (c-1), or (c-2) of this section in any October during which the member participates in the DROP.

(d) In computing a member's years of participation, time served in the armed forces of the nation during war or national emergency is considered continuous service. Except for that military service, credit for prior service shall be given only if a member returns to active service as a firefighter before the fifth anniversary of a previous effective date of termination.

Notwithstanding any provision of this article to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the code. A member who is engaged in active duty in any of the military services of the United States shall receive credited pension service for the period of the military service if the member returns to employment with the employer municipality's fire department with an honorable discharge within the period required by the federal reemployment Act and the period of military service does not exceed the period prescribed by that Act. If a member sustains an injury while on military leave under the terms of the federal reemployment Act, pension benefits are payable based on the off-duty disability benefit provisions prescribed by Section 6(e) of this article. If a member dies while on military leave under the terms of the federal reemployment

Act, death benefits are payable to eligible survivors based on the off-duty death benefits prescribed by Section 7 of this article. This subsection is intended to comply with the federal reemployment Act. The board may make, maintain, and amend policies and procedures as desirable or necessary to implement the federal reemployment Act. In this subsection, "federal reemployment Act" means the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended.

(e) A retired firefighter may be recalled to duty by the chief of the fire department in case of great conflagration and shall perform those duties the chief directs but does not have a claim against a municipality or the fund of that municipality for payment for the duty performed.

(f) A member, eligible survivor, or beneficiary who is entitled to receive a benefit payment under this article is entitled to receive the benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter, notwithstanding the fact that the member may remain on the payroll of the member's fire department or receive sick leave, vacation, or other pay after the effective date of termination of the member's regular duties as a firefighter. In this article, an authorization to receive a benefit "beginning after the effective date of the member's termination of active service" includes authority for the member to instead elect to make the member's pension effective after the date the member ceases to carry out the member's regular duties as a firefighter. If there is a delay in beginning payment of benefits resulting from the requirements of Section 6(h) of this article for disability pensions, the member or beneficiary shall, when the disability pension is approved by the board, be paid the full amount of the disability pension that has accrued since the effective date of termination of the member's regular duties as a firefighter.

(g) A member may designate in a trust document accepted by the fund a trustee to receive the benefit payable to any eligible survivor or beneficiary other than the member's eligible spouse or a spouse eligible to receive a benefit under the DROP. On or after the death or incapacity of the member, an eligible survivor or beneficiary may designate a trustee under this subsection. If the eligible survivor or beneficiary is disabled or a minor child, the parent or legal guardian, as applicable, of the eligible survivor or beneficiary may make the designation. Any designation made under this subsection must be made on a form approved by the board.

(h) A benefit payable under this article to a minor or another person under a legal disability may be made only to the legal guardian of the person, or as provided by Subsection (g) of this section. A payment made in accordance with this section on behalf of a minor or other person under a legal disability fully discharges the fund's obligation to that person.

(i) Notwithstanding any other provision of this article, a person entitled to receive benefit payments from the fund may:

(1) make a one-time election to receive a smaller pension or survivor benefit than is otherwise provided under this article;

(2) make a one-time election not to receive any future annual increases in the pension or survivor benefits received by the person or the person's beneficiary; or

(3) make a one-time election not to receive a specific benefit enhancement.

(j) An election under Subsection (i) of this section must be made in writing and submitted to the board for approval. On the date the board grants approval of an election under Subsection (i) of this section, the election becomes irrevocable.

(k) A benefit under this article may not be integrated with benefits payable under the federal Social Security Act. In a municipality in which firefighters are eligible to enroll for or receive retirement benefits under the Social Security Act, benefits that may be available to a member under the Social Security Act may not be taken into account in determining the amount of benefits a member may receive under this article.

(l) If the board determines that the amount in the fund is insufficient to pay in full any pension or disability benefits, all pension and disability benefits made after the date of the determination shall be reduced pro rata for the period the insufficiency exists.

(m) A benefit payable under this article because of the death of a member or eligible beneficiary may not be paid to a person convicted of causing that death but instead shall be paid as if the convicted person predeceased the deceased member or beneficiary. Except as otherwise permitted by this subsection with respect to suspension of benefits, the board is not required to withhold payment to a person convicted of causing the death of a member or eligible beneficiary until the board receives actual notice of the conviction of that person. The board may suspend payment of a benefit payable on the death of a member or an eligible beneficiary on the indictment of the person who would otherwise be entitled to the benefit, and the suspension remains in effect until the board determines that a final disposition of the charges relating to the cause of death has occurred. If a benefit payment is suspended under this subsection and the person is not convicted, the benefit again becomes payable with interest computed at the rate earned by the fund during the time the benefit payment was suspended. For purposes of this subsection, a person has been convicted of causing the death of a member or eligible beneficiary if:

(1) the person has pleaded guilty or nolo contendere to, or the person has been found guilty by a court of competent jurisdiction of, an offense at the trial of which it is established that the person's intentional or knowing act or omission caused the death of the member or eligible beneficiary, regardless of whether sentence is imposed or probated; and

(2) an appeal of the conviction is not pending, and the time provided for appeal has expired.

(n) If one or more persons have been given a power of attorney effective to direct distribution of benefits to any person eligible to receive benefits under this article and the fund receives conflicting directions as to those distributions, the fund may withhold benefits until either the final result of judicial proceedings determining which directive prevails or the fund receives a signed agreement between attorneys-in-fact, and principals, if applicable, on distribution directives that completely resolves the conflict. The fund may not be made a party to any

proceeding or suit concerning or involving the distribution of benefits under conflicting directives.

(o) The fund may offset amounts received wrongly or in error from the fund by any person receiving benefit payments under this article by making deductions from future benefit payments otherwise payable to the person or the person's beneficiaries. Deductions from future payments for an overpayment may be made only for an overpayment made during the three years preceding the date the board discovers or discovered the overpayment. The board may not recover an overpayment from a recipient if the overpayment was made more than three years before the date the board discovers or discovered the error. The limitation provided by this section does not apply to an overpayment that a reasonable person should know the person is not entitled to receive. The remedy provided by this subsection is not exclusive of any other remedy available to the fund.

Sec. 12. Appeals of benefit decisions.

(a) A member who is eligible for retirement for length of service or disability or who has a claim for temporary disability, or any of the member's beneficiaries, who is aggrieved by a decision or order of the board, whether on the basis of rejection of a claim or of the amount allowed, may appeal from the decision or order of the board to a district court in the county in which the board is located by giving written notice of the intention to appeal. The notice must contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons the party feels aggrieved. The notice must be served personally on an officer of the board not later than the 20th day after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and on whom the notice was served.

(b) Not later than the 30th day after the date of service of the notice of intention to appeal on the board, an officer of the board shall file with the district court a transcript of all papers and proceedings in the case before the board. When the copy of the notice of intention to appeal and the transcript have been filed with the court, the appeal is considered 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.

(c) At any time before issuing a decision on the appeal, the court may require further or additional proof or information, either documentary or under oath. On issuing a decision on the appeal, the court shall give to each party to the appeal a copy of the decision and shall direct the board as to the disposition of the case. The final decision or order of the district court is appealable in the same manner as are civil cases generally.

Sec. 13. Membership and member contributions.

(a) Each person who becomes a firefighter before age 36 becomes a member of the fund if the person's application for membership is accepted by the board. In accepting employment as a firefighter, and on becoming a member of the fund, a firefighter agrees to make contributions

required under this article of members of the fund who are in active service and is entitled to participate in the benefits of membership in the fund as provided by this article.

(b) At the time that physical examinations are administered on behalf of the municipality, each applicant must be provided written notice that a copy of the results of the examination will be forwarded to the board for the purpose of determining whether the applicant has a preexisting condition that would be relevant to any determination under Section 6 of this article. Not later than the 10th day after the date of a physical examination performed on an applicant for a beginning position in the fire department as required by Section 143.022, Local Government Code, the municipality shall provide to the board a copy of all documents resulting from the physical examination. The board may require additional physical examinations if necessary in determining the presence or absence of any preexisting condition. The fund shall pay the cost of any additional physical examination the board requires. The applicant's membership in the fund is effective on acceptance by the board.

(c) Subject to adjustments authorized by Section 13E or 13F of this article, each member in active service shall make contributions to the fund in an amount equal to 10.5 percent of the member's salary at the time of the contribution.

(c-1) In addition to the contribution under Subsection (c) of this section, each DROP participant, as identified by the fund to the municipality for purposes of this subsection, shall contribute to the fund an amount equal to 100 percent of the participant's unused leave pay that would otherwise be payable to the member. The fund shall credit any unused leave pay amount contributed by a DROP participant to the participant's DROP account.

(c-2) The governing body of the municipality shall deduct from the salary of each member the contribution required by this section and shall forward the contributions to the fund as soon as practicable.

(d) [Repealed.]

(e) [Repealed.]

(f) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section become a part of the fund of the municipality in which the contributing member serves at the time of the contribution. In accordance with Section 14(c) of this article, contributions under any qualified governmental excess benefit arrangement do not become part of the trust fund assets of the fund.

(g) On action of its governing body, a municipality may pick up members' contributions prescribed under Subsection (c) of this section for purposes of Section 414(h)(2) of the code. A member's salary is affected by this subsection only as this subsection relates to the computation of pension contributions and gross pay for federal tax purposes. The computation of pension benefits, severance pay, and other benefits is not affected.

(h) [Repealed by Acts 2003, 78th Leg., ch. 333, § 13.]

Sec. 13A. Municipal contributions.

(a) Beginning with the year 2017 effective date, the municipality shall make contributions to the fund as provided by this section and Section 13B, 13C, 13E, or 13F of this article, as applicable. The municipality shall contribute:

(1) beginning with the year 2017 effective date and ending with the fiscal year ending June 30, 2018, an amount equal to the municipal contribution rate, as determined in the initial risk sharing valuation study conducted under Section 13C of this article and adjusted under Section 13E or 13F of this article, as applicable, multiplied by the pensionable payroll for the fiscal year; and

(2) for each fiscal year after the fiscal year ending June 30, 2018, an amount equal to the municipal contribution rate, as determined in a subsequent risk sharing valuation study conducted under Section 13B of this article and adjusted under Section 13E or 13F of this article, as applicable, multiplied by the pensionable payroll for the applicable fiscal year.

(b) Except by written agreement between the municipality and the board providing for an earlier contribution date, at least biweekly, the municipality shall make the contributions required by Subsection (a) of this section by depositing with the fund an amount equal to the municipal contribution rate multiplied by the pensionable payroll for the applicable biweekly period.

(c) With respect to each fiscal year:

(1) the first contribution by the municipality under this section for the fiscal year shall be made not later than the date payment is made to firefighters for their first full biweekly pay period beginning on or after the first day of the fiscal year; and

(2) the final contribution by the municipality under this section for the fiscal year shall be made not later than the date payment is made to firefighters for the final biweekly pay period of the fiscal year.

(d) In addition to the amounts required under this section, the municipality may at any time contribute additional amounts for deposit in the fund by entering into a written agreement with the board.

(e) Notwithstanding any other law, the municipality may not issue a pension obligation bond to fund the municipal contribution rate under this section.

Sec. 13B. Risk sharing valuation studies.

(a) The fund and the municipality shall separately cause their respective actuaries to prepare a risk sharing valuation study in accordance with this section and actuarial standards of practice. A risk sharing valuation study must:

(1) be dated as of the first day of the fiscal year in which the study is required to be prepared;

(2) be included in the fund's standard valuation study prepared annually for the fund;

(3) calculate the unfunded actuarial accrued liability of the fund;

- (4) be based on actuarial data provided by the fund actuary or, if actuarial data is not provided, on estimates of actuarial data;
- (5) estimate the municipal contribution rate, taking into account any adjustments required under Section 13E or 13F of this article for all applicable prior fiscal years;
- (6) subject to Subsection (g) of this section, be based on the following assumptions and methods that are consistent with actuarial standards of practice:
- (A) an ultimate entry age normal actuarial method;
 - (B) for purposes of determining the actuarial value of assets:
 - (i) except as provided by Subparagraph (ii) of this paragraph and Section 13E(c)(1) or 13F(c)(2) of this article, an asset smoothing method recognizing actuarial losses and gains over a five-year period applied prospectively beginning on the year 2017 effective date; and
 - (ii) for the initial risk sharing valuation study prepared under Section 13C of this article, a marked-to-market method applied as of June 30, 2016;
 - (C) closed layered amortization of liability layers to ensure that the amortization period for each layer begins 12 months after the date of the risk sharing valuation study in which the liability layer is first recognized;
 - (D) each liability layer is assigned an amortization period;
 - (E) each liability loss layer amortized over a period of 30 years from the first day of the fiscal year beginning 12 months after the date of the risk sharing valuation study in which the liability loss layer is first recognized, except that the legacy liability must be amortized from July 1, 2016, for a 30-year period beginning July 1, 2017;
 - (F) the amortization period for each liability gain layer being:
 - (i) equal to the remaining amortization period on the largest remaining liability loss layer and the two layers must be treated as one layer such that if the payoff year of the liability loss layer is accelerated or extended, the payoff year of the liability gain layer is also accelerated or extended; or
 - (ii) if there is no liability loss layer, a period of 30 years from the first day of the fiscal year beginning 12 months after the date of the risk sharing valuation study in which the liability gain layer is first recognized;
 - (G) liability layers, including the legacy liability, funded according to the level percent of payroll method;
 - (H) the assumed rate of return, subject to adjustment under Section 13E(c)(2) of this article or, if Section 13C(g) of this article applies, adjustment in accordance

with a written agreement, except the assumed rate of return may not exceed seven percent per annum;

(I) the price inflation assumption as of the most recent actuarial experience study, which may be reset by the board by plus or minus 50 basis points based on that actuarial experience study;

(J) projected salary increases and payroll growth rate set in consultation with the municipality's finance director; and

(K) payroll for purposes of determining the corridor midpoint and municipal contribution rate must be projected using the annual payroll growth rate assumption, which for purposes of preparing any amortization schedule may not exceed three percent; and

(7) be revised and restated, if appropriate, not later than:

(A) the date required by a written agreement entered into between the municipality and the board; or

(B) the 30th day after the date required action is taken by the board under Section 13E or 13F of this article to reflect any changes required by either section.

(b) As soon as practicable after the end of a fiscal year, the fund actuary at the direction of the fund and the municipal actuary at the direction of the municipality shall separately prepare a proposed risk sharing valuation study based on the fiscal year that just ended.

(c) Not later than September 30 following the end of the fiscal year, the fund shall provide to the municipal actuary, under a confidentiality agreement in which the municipal actuary agrees to comply with the confidentiality provisions of Section 17 of this article, the actuarial data described by Subsection (a)(4) of this section.

(d) Not later than the 150th day after the last day of the fiscal year:

(1) the fund actuary, at the direction of the fund, shall provide the proposed risk sharing valuation study prepared by the fund actuary under Subsection (b) of this section to the municipal actuary; and

(2) the municipal actuary, at the direction of the municipality, shall provide the proposed risk sharing valuation study prepared by the municipal actuary under Subsection (b) of this section to the fund actuary.

(e) Each actuary described by Subsection (d) of this section may provide copies of the proposed risk sharing valuation studies to the municipality or to the fund, as appropriate.

(f) If, after exchanging proposed risk sharing valuation studies under Subsection (d) of this section, it is found that the difference between the estimated municipal contribution rate recommended in the proposed risk sharing valuation study prepared by the fund actuary and the

estimated municipal contribution rate recommended in the proposed risk sharing valuation study prepared by the municipal actuary for the corresponding fiscal year is:

(1) less than or equal to two percentage points, the estimated municipal contribution rate recommended by the fund actuary will be the estimated municipal contribution rate for purposes of Subsection (a)(5) of this section, and the proposed risk sharing valuation study prepared for the fund is considered to be the final risk sharing valuation study for the fiscal year for the purposes of this article; or

(2) greater than two percentage points, the municipal actuary and the fund actuary shall have 20 business days to reconcile the difference, provided that, without the mutual agreement of both actuaries, the difference in the estimated municipal contribution rate recommended by the municipal actuary and the estimated municipal contribution rate recommended by the fund actuary may not be further increased and:

(A) if, as a result of reconciliation efforts under this subdivision, the difference is reduced to less than or equal to two percentage points:

(i) subject to any adjustments under Section 13E or 13F of this article, as applicable, the estimated municipal contribution rate proposed under the reconciliation by the fund actuary will be the estimated municipal contribution rate for purposes of Subsection (a)(5) of this section; and

(ii) the fund's risk sharing valuation study is considered to be the final risk sharing valuation study for the fiscal year for the purposes of this article; or

(B) if, after 20 business days, the fund actuary and the municipal actuary are not able to reach a reconciliation that reduces the difference to an amount less than or equal to two percentage points, subject to any adjustments under Section 13E or 13F of this article, as applicable:

(i) the municipal actuary at the direction of the municipality and the fund actuary at the direction of the fund each shall deliver to the finance director of the municipality and the executive director of the fund a final risk sharing valuation study with any agreed-to changes, marked as the final risk sharing valuation study for each actuary; and

(ii) not later than the 90th day before the first day of the next fiscal year, the finance director and the executive director shall execute a joint addendum to the final risk sharing valuation study received under Subparagraph (i) of this paragraph that is a part of the final risk sharing valuation study for the fiscal year for all purposes and reflects the arithmetic average of the estimated municipal contribution rates for the fiscal year stated by the municipal actuary and the fund actuary in the final risk sharing valuation study for purposes of Subsection (a)(5) of this section.

(g) The assumptions and methods used and the types of actuarial data and financial information used to prepare the initial risk sharing valuation study under Section 13C of this article shall be used to prepare each subsequent risk sharing valuation study under this section, unless changed based on the actuarial experience study conducted under Section 13D of this article.

(h) The actuarial data provided under Subsection (a)(4) of this section may not include the identifying information of individual members.

Sec. 13C. Initial Risk Sharing Valuation Studies; Corridor Midpoint.

(a) The fund and the municipality shall separately cause their respective actuaries to prepare an initial risk sharing valuation study that is dated as of July 1, 2016, in accordance with this section. An initial risk sharing valuation study must:

(1) except as otherwise provided by this section, be prepared in accordance with Section 13B of this article and, for purposes of Section 13B(a)(4) of this article, be based on actuarial data as of June 30, 2016, or, if actuarial data is not provided, on estimates of actuarial data; and

(2) project the corridor midpoint for 31 fiscal years beginning with the fiscal year beginning July 1, 2017.

(b) If the initial risk sharing valuation study has not been prepared consistent with this section before the year 2017 effective date, as soon as practicable after the year 2017 effective date:

(1) the fund shall provide to the municipal actuary, under a confidentiality agreement, the necessary actuarial data used by the fund actuary to prepare the proposed initial risk sharing valuation study; and

(2) not later than the 30th day after the date the municipal actuary receives the actuarial data:

(A) the municipal actuary, at the direction of the municipality, shall provide a proposed initial risk sharing valuation study to the fund actuary; and

(B) the fund actuary, at the direction of the fund, shall provide a proposed initial risk sharing valuation study to the municipal actuary.

(c) If, after exchanging proposed initial risk sharing valuation studies under Subsection (b)(2) of this section, it is determined that the difference between the estimated municipal contribution rate for any fiscal year recommended in the proposed initial risk sharing valuation study prepared by the fund actuary and the estimated municipal contribution rate for any fiscal year recommended in the proposed initial risk sharing valuation study prepared by the municipal actuary is:

(1) less than or equal to two percentage points, the estimated municipal contribution rate for that fiscal year recommended by the fund actuary will be the estimated municipal contribution rate for purposes of Section 13B(a)(5) of this article; or

(2) greater than two percentage points, the municipal actuary and the fund actuary shall have 20 business days to reconcile the difference and:

(A) if, as a result of reconciliation efforts under this subdivision, the difference in any fiscal year is reduced to less than or equal to two percentage points, the estimated municipal contribution rate recommended by the fund actuary for that fiscal year will be the estimated municipal contribution rate for purposes of Section 13B(a)(5) of this article; or

(B) if, after 20 business days, the municipal actuary and the fund actuary are not able to reach a reconciliation that reduces the difference to an amount less than or equal to two percentage points for any fiscal year:

(i) the municipal actuary at the direction of the municipality and the fund actuary at the direction of the fund each shall deliver to the finance director of the municipality and the executive director of the fund a final initial risk sharing valuation study with any agreed-to changes, marked as the final initial risk sharing valuation study for each actuary; and

(ii) the finance director and the executive director shall execute a joint addendum to the final initial risk sharing valuation study that is a part of each final initial risk sharing valuation study for all purposes and that reflects the arithmetic average of the estimated municipal contribution rate for each fiscal year in which the difference was greater than two percentage points for purposes of Section 13B(a)(5) of this article.

(d) In preparing the initial risk sharing valuation study, the municipal actuary and fund actuary shall:

(1) adjust the actuarial value of assets to be equal to the market value of assets as of July 1, 2016; and

(2) assume benefit and contribution changes under this article as of the year 2017 effective date.

(e) If the municipal actuary does not prepare an initial risk sharing valuation study for purposes of this section, the fund actuary's initial risk sharing valuation study will be used as the final risk sharing valuation study for purposes of this article unless the municipality did not prepare a proposed initial risk sharing valuation study because the fund actuary did not provide the necessary actuarial data in a timely manner. If the municipality did not prepare a proposed initial risk sharing valuation study because the fund actuary did not provide the necessary actuarial data in a timely manner, the municipal actuary shall have 60 days to prepare the proposed initial risk sharing valuation study on receipt of the necessary information.

(f) If the fund actuary does not prepare a proposed initial risk sharing valuation study for purposes of this section, the proposed initial risk sharing valuation study prepared by the municipal actuary will be the final risk sharing valuation study for purposes of this article.

(g) The municipality and the board may agree on a written transition plan for resetting the corridor midpoint:

- (1) if at any time the funded ratio is equal to or greater than 100 percent; or
- (2) for any fiscal year after the payoff year of the legacy liability.

(h) If the municipality and the board have not entered into an agreement described by Subsection (g) of this section in a given fiscal year, the corridor midpoint will be the corridor midpoint determined for the 31st fiscal year in the initial risk sharing valuation study prepared in accordance with this section.

(i) If the municipality makes a contribution to the fund of at least \$ 5 million more than the amount that would be required by Section 13A(a) of this article, a liability gain layer with the same remaining amortization period as the legacy liability is created and the corridor midpoint shall be decreased by the amortized amount in each fiscal year covered by the liability gain layer produced divided by the projected pensionable payroll.

Sec. 13D. Actuarial experience studies.

(a) At least once every four years, the fund actuary at the direction of the fund shall conduct an actuarial experience study in accordance with actuarial standards of practice. The actuarial experience study required by this subsection must be completed not later than September 30 of the year in which the study is required to be conducted.

(b) Except as otherwise expressly provided by Sections 13B(a)(6)(A)-(I) of this article, actuarial assumptions and methods used in the preparation of a risk sharing valuation study, other than the initial risk sharing valuation study, shall be based on the results of the most recent actuarial experience study.

(c) Not later than the 180th day before the date the board may consider adopting any assumptions and methods for purposes of Section 13B of this article, the fund shall provide the municipal actuary with a substantially final draft of the fund's actuarial experience study, including:

- (1) all assumptions and methods recommended by the fund actuary; and
- (2) summaries of the reconciled actuarial data used in creation of the actuarial experience study.

(d) Not later than the 60th day after the date the municipality receives the final draft of the fund's actuarial experience study under Subsection (c) of this section, the municipal actuary and fund actuary shall confer and cooperate on reconciling and producing a final actuarial experience study. During the period prescribed by this subsection, the fund actuary may modify the recommended assumptions in the draft actuarial experience study to reflect any changes to assumptions and methods to which the fund actuary and the municipal actuary agree.

(e) At the municipal actuary's written request, the fund shall provide additional actuarial data used by the fund actuary to prepare the draft actuarial experience study, provided that confidential data may only be provided subject to a confidentiality agreement in which the

municipal actuary agrees to comply with the confidentiality provisions of Section 17 of this article.

(f) The municipal actuary at the direction of the municipality shall provide in writing to the fund actuary and the fund:

- (1) any assumptions and methods recommended by the municipal actuary that differ from the assumptions and methods recommended by the fund actuary; and
- (2) the municipal actuary's rationale for each method or assumption the actuary recommends and determines to be consistent with standards adopted by the Actuarial Standards Board.

(g) Not later than the 30th day after the date the fund actuary receives the municipal actuary's written recommended assumptions and methods and rationale under Subsection (f) of this section, the fund shall provide a written response to the municipality identifying any assumption or method recommended by the municipal actuary that the fund does not accept. If any assumption or method is not accepted, the fund shall recommend to the municipality the names of three independent actuaries for purposes of this section.

(h) An actuary may only be recommended, selected, or engaged by the fund as an independent actuary under this section if the person:

- (1) is not already engaged by the municipality, the fund, or any other pension system authorized under Article 6243g-4, Revised Statutes, or Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes), to provide actuarial services to the municipality, the fund, or another pension system referenced in this subdivision;
- (2) is a member of the American Academy of Actuaries; and
- (3) has at least five years of experience as an actuary working with one or more public retirement systems with assets in excess of \$ 1 billion.

(i) Not later than the 20th day after the date the municipality receives the list of three independent actuaries under Subsection (g) of this section, the municipality shall identify and the fund shall hire one of the listed independent actuaries on terms acceptable to the municipality and the fund to perform a scope of work acceptable to the municipality and the fund. The municipality and the fund each shall pay 50 percent of the cost of the independent actuary engaged under this subsection. The municipality shall be provided the opportunity to participate in any communications between the independent actuary and the fund concerning the engagement, engagement terms, or performance of the terms of the engagement.

(j) The independent actuary engaged under Subsection (i) of this section shall receive on request from the municipality or the fund:

- (1) the fund's draft actuarial experience study, including all assumptions and methods recommended by the fund actuary;

- (2) summaries of the reconciled actuarial data used to prepare the draft actuarial experience study;
- (3) the municipal actuary's specific recommended assumptions and methods together with the municipal actuary's written rationale for each recommendation;
- (4) the fund actuary's written rationale for its recommendations; and
- (5) if requested by the independent actuary and subject to a confidentiality agreement in which the independent actuary agrees to comply with the confidentiality provisions of Section 17 of this article, additional confidential actuarial data.

(k) Not later than the 30th day after the date the independent actuary receives all the requested information under Subsection (j) of this section, the independent actuary shall advise the fund and the municipality whether it agrees with the assumption or method recommended by the municipal actuary or the corresponding method or assumption recommended by the fund actuary, together with the independent actuary's rationale for making the determination. During the period prescribed by this subsection, the independent actuary may discuss recommendations in simultaneous consultation with the fund actuary and the municipal actuary.

(l) The fund and the municipality may not seek any information from any prospective independent actuary about possible outcomes of the independent actuary's review.

(m) If an independent actuary has questions or concerns regarding an engagement entered into under this section, the independent actuary shall simultaneously consult with both the municipal actuary and the fund actuary regarding the questions or concerns. This subsection does not limit the fund's authorization to take appropriate steps to complete the engagement of the independent actuary on terms acceptable to both the fund and the municipality or to enter into a confidentiality agreement with the independent actuary, if needed.

(n) If the board does not adopt an assumption or method recommended by the municipal actuary to which the independent actuary agrees, or recommended by the fund actuary, the municipal actuary is authorized to use that recommended assumption or method in connection with preparation of a subsequent risk sharing valuation study under Section 13B of this article until the next actuarial experience study is conducted.

Sec. 13E. Municipal contribution rate when estimated municipal contribution rate lower than corridor midpoint; authorization for certain adjustments.

(a) This section governs the determination of the municipal contribution rate applicable in a fiscal year if the estimated municipal contribution rate is lower than the corridor midpoint.

(b) If the funded ratio is:

- (1) less than 90 percent, the municipal contribution rate for the fiscal year equals the corridor midpoint; or
- (2) equal to or greater than 90 percent and the municipal contribution rate is:

(A) equal to or greater than the minimum contribution rate, the estimated municipal contribution rate is the municipal contribution rate for the fiscal year; or

(B) except as provided by Subsection (e) of this section, less than the minimum contribution rate for the corresponding fiscal year, the municipal contribution rate for the fiscal year equals the minimum contribution rate achieved in accordance with Subsection (c) of this section.

(c) For purposes of Subsection (b)(2)(B) of this section, the following adjustments shall be applied sequentially to the extent required to increase the estimated municipal contribution rate to equal the minimum contribution rate:

(1) first, adjust the actuarial value of assets equal to the current market value of assets, if making the adjustment causes the municipal contribution rate to increase;

(2) second, under a written agreement between the municipality and the board entered into not later than April 30 before the first day of the next fiscal year, reduce the assumed rate of return;

(3) third, under a written agreement between the municipality and the board entered into not later than April 30 before the first day of the next fiscal year, prospectively restore all or part of any benefit reductions or reduce increased employee contributions, in each case made after the year 2017 effective date; and

(4) fourth, accelerate the payoff year of the existing liability loss layers, including the legacy liability, by accelerating the oldest liability loss layers first, to an amortization period that is not less than 10 years from the first day of the fiscal year beginning 12 months after the date of the risk sharing valuation study in which the liability loss layer is first recognized.

(d) If the funded ratio is:

(1) equal to or greater than 100 percent:

(A) all existing liability layers, including the legacy liability, are considered fully amortized and paid;

(B) the applicable fiscal year is the payoff year for the legacy liability; and

(C) for each fiscal year subsequent to the fiscal year described by Paragraph (B) of this subdivision, the corridor midpoint shall be determined as provided by Section 13C(g) of this article; and

(2) greater than 100 percent in a written agreement between the municipality and the fund, the fund may reduce member contributions or increase pension benefits if, as a result of the action:

(A) the funded ratio is not less than 100 percent; and

(B) the municipal contribution rate is not more than the minimum contribution rate.

(e) Except as provided by Subsection (f) of this section, if an agreement under Subsection (d) of this section is not reached on or before April 30 before the first day of the next fiscal year, before the first day of the next fiscal year the board shall reduce member contributions and implement or increase cost-of-living adjustments, but only to the extent that the municipal contribution rate is set at or below the minimum contribution rate and the funded ratio is not less than 100 percent.

(f) If any member contribution reduction or benefit increase under Subsection (e) of this section has occurred within the previous three fiscal years, the board may not make additional adjustments to benefits, and the municipal contribution rate must be set to equal the minimum contribution rate.

Sec. 13F. Municipal contribution rate when estimated municipal contribution rate equal to or greater than corridor midpoint; authorization for certain adjustments.

(a) This section governs the determination of the municipal contribution rate in a fiscal year when the estimated municipal contribution rate is equal to or greater than the corridor midpoint.

(b) If the estimated municipal contribution rate is:

(1) less than or equal to the maximum contribution rate for the corresponding fiscal year, the estimated municipal contribution rate is the municipal contribution rate; or

(2) except as provided by Subsection (d) or (e) of this section, greater than the maximum contribution rate for the corresponding fiscal year, the municipal contribution rate equals the corridor midpoint achieved in accordance with Subsection (c) of this section.

(c) For purposes of Subsection (b)(2) of this section, the following adjustments shall be applied sequentially to the extent required to decrease the estimated municipal contribution rate to equal the corridor midpoint:

(1) first, if the payoff year of the legacy liability was accelerated under Section 13E(c) of this article, extend the payoff year of existing liability loss layers, by extending the most recent loss layers first, to a payoff year not later than 30 years from the first day of the fiscal year beginning 12 months after the date of the risk sharing valuation study in which the liability loss layer is first recognized; and

(2) second, adjust the actuarial value of assets to the current market value of assets, if making the adjustment causes the municipal contribution rate to decrease.

(d) If the municipal contribution rate after adjustment under Subsection (c) of this section is greater than the third quarter line rate:

(1) the municipal contribution rate equals the third quarter line rate; and

(2) to the extent necessary to comply with Subdivision (1) of this subsection, the municipality and the board shall enter into a written agreement to increase member

contributions and make other benefit or plan changes not otherwise prohibited by applicable federal law or regulations.

(e) If an agreement under Subsection (d)(2) of this section is not reached on or before April 30 before the first day of the next fiscal year, before the start of the next fiscal year to which the municipal contribution rate would apply, the board, to the extent necessary to set the municipal contribution rate equal to the third quarter line rate, shall:

- (1) increase member contributions and decrease cost-of-living adjustments;
- (2) increase the normal retirement age; or
- (3) take any combination of actions authorized under Subdivisions (1) and (2) of this subsection.

(f) If the municipal contribution rate remains greater than the corridor midpoint in the third fiscal year after adjustments are made in accordance with Subsection (d)(2) of this section, in that fiscal year the municipal contribution rate equals the corridor midpoint achieved in accordance with Subsection (g) of this section.

(g) The municipal contribution rate must be set at the corridor midpoint under Subsection (f) of this section by:

- (1) in the risk sharing valuation study for the third fiscal year described by Subsection (f) of this section, adjusting the actuarial value of assets to equal the current market value of assets, if making the adjustment causes the municipal contribution rate to decrease; and
- (2) under a written agreement entered into between the municipality and the board:
 - (A) increasing member contributions; and
 - (B) making any other benefit or plan changes not otherwise prohibited by applicable federal law or regulations.

(h) If an agreement under Subsection (g)(2) of this section is not reached on or before April 30 before the first day of the next fiscal year, before the start of the next fiscal year, the board, to the extent necessary to set the municipal contribution rate equal to the corridor midpoint, shall:

- (1) increase member contributions and decrease cost-of-living adjustments;
- (2) increase the normal retirement age; or
- (3) take any combination of actions authorized under Subdivisions (1) and (2) of this subsection.

Sec. 13G. Interpretation of certain risk sharing provisions; unilateral decisions and actions prohibited.

(a) Nothing in this article, including Section 2(p) or (p-1) of this article and any authority of the board to construe and interpret this article, to determine any fact, to take any action, or to

interpret any terms used in Sections 13A through 13F of this article, may alter or change Sections 13A through 13F of this article.

(b) No unilateral decision or action by the board is binding on the municipality and no unilateral decision or action by the municipality is binding on the fund with respect to the application of Sections 13A through 13F of this article unless expressly provided by a provision of those sections. Nothing in this subsection is intended to limit the powers or authority of the board.

(c) Section 10 of this article does not apply to a benefit increase under Section 13E of this article, and Section 10 of this article is suspended while Sections 13A through 13F of this article are in effect.

Sec. 13H. State pension review board; report.

(a) After preparing a final risk sharing valuation study under Section 13B or 13C of this article, the fund and the municipality shall jointly submit a copy of the study or studies, as appropriate, to the State Pension Review Board for a determination that the fund and municipality are in compliance with this article.

(b) Not later than the 30th day after the date an action is taken under Section 13E or 13F of this article, the fund shall submit a report to the State Pension Review Board regarding any actions taken under those sections.

(c) The State Pension Review Board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the legislative committees having principal jurisdiction over legislation governing public retirement systems if the State Pension Review Board determines the fund or the municipality is not in compliance with Sections 13A through 13G of this article.

Sec. 14. Internal revenue code limitations.

(a) Notwithstanding any other provision of this article, a member may not accrue a benefit or allowance under this article in excess of an amount that, when added to all other pension benefits received under plans of the municipality that are qualified under Section 401 of the code, results in an annual benefit in excess of the applicable limits provided by Section 415 of the code. That accrual limitation applies only as long as satisfaction of Section 415 of the code is necessary to maintain the tax-qualified status of the fund under Section 401 of the code. Any benefit accruals limited under this subsection must be determined by a qualified actuary selected by the board.

(b) Notwithstanding any other provision of this article, the fund shall be administered in a manner that complies with the code, United States Treasury Department regulations, and Internal Revenue Service rulings and notices applicable to public retirement systems. The board shall adopt rules and amend or repeal conflicting rules to ensure compliance with this subsection.

(c) The board may establish and maintain a qualified governmental excess benefit arrangement, in accordance with Section 415(m) of the code, solely for the purpose of providing to members the amount of each member's pension benefit otherwise payable under the fund that exceeds the limitations on benefits imposed by Section 415 of the code. The board may maintain a separate

trust solely for providing benefits under the arrangement or may maintain the arrangement on an unfunded basis through municipal contributions as benefits become payable. Benefits provided by that arrangement may not be paid from the trust fund assets that are available for payment of any other benefit under this article. Benefits under any qualified governmental excess benefit arrangement shall be paid or funded entirely through municipal contributions in an amount approved by the board. An election may not be provided at any time to a member, directly or indirectly, to defer compensation under the arrangement. The operation and administration of any qualified governmental excess benefit arrangement is the responsibility of the board, which has the same powers concerning the arrangement as are provided to the board under this article concerning the fund.

Sec. 15. Exemption of benefits from judicial process.

The fund may not, either before or after its order of disbursement by the board to a member, a spouse eligible to receive a benefit under the DROP, an eligible spouse, the guardian of an eligible child, or an eligible parent, be held, seized, subjected to, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process issued out of, or by, any court for the payment or satisfaction of any debt, damage, claim, demand, or judgment against a member, a spouse eligible to receive a benefit under the DROP, an eligible spouse, the guardian of an eligible child, or an eligible parent. The fund or any claim against the fund may not be directly or indirectly assigned or transferred, and any attempt to assign or transfer the fund or a claim is void. The fund shall be sacredly held, kept, and disbursed only for the purposes provided by this article.

Sec. 16. Service credit for members previously members of similar funds.

(a) A person who becomes a firefighter in a municipality to which this article applies may receive service credit for prior employment with the fully paid fire department of another municipality in this state with a similar fund benefiting only firefighters of that municipality to which the firefighter contributed if:

- (1) the firefighter is under 36 years of age at the time of applying to the fund;
- (2) the firefighter passes a physical examination;
- (3) the firefighter pays into the fund an amount equal to the total contribution the firefighter would have made had the firefighter been employed by the municipality, at the municipality's pay scale, instead of the municipality by which the firefighter was previously employed, plus six percent interest, compounded annually;
- (4) the firefighter applies for that credit not later than the 60th day after the date on which membership begins; and
- (5) the firefighter has moved directly into employment at the fire department from the fire department for which the prior service credit is sought, without any intervening employment or extended interruption.

(b) A member may receive credit for prior service in more than one fire department under Subsection (a) of this section only if there have not been interruptions in employment and each preceding service meets the other requirements of Subsection (a) of this section.

(c) The municipality to which the member has transferred shall pay an amount equal to the amount it would have paid had the member been employed by that municipality instead of the municipality by which the firefighter was previously employed, based on the municipality's pay scale, plus six percent interest, compounded annually. Both the municipality's contribution and the member's contribution must be paid promptly on approval of the member's application for service credit.

(d) A firefighter may not participate under this section in the fund of the municipality to which the firefighter has transferred until the firefighter has fully complied with this article and the municipality has complied with Subsection (c) of this section.

(e) A firefighter eligible for prior service credit may participate in the fund, subject to the other requirements of this article, without obtaining that credit, and if the firefighter does not comply with the provisions and time limits of this section, the firefighter is ineligible for the credit.

Sec. 17. Confidentiality of information about members or beneficiaries.

(a) Information contained in records that are in the custody of a fund established under this article concerning an individual member, retiree, or beneficiary is not public information under Chapter 552, Government Code. The information may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual's attorney, guardian, executor, administrator, or conservator, or other legal representative of the individual's estate or court-approved small estate or other person who the board determines is acting in the interest of the individual or the individual's estate;

(C) a spouse or former spouse of the individual, or the attorney of the spouse or former spouse, if the information concerns the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the fund; or

(D) a person with written authorization from the individual to receive the information; or

(2) the information is disclosed under an authorization of the board that specifies the reason for the disclosure.

(b) Notwithstanding Subsection (a) of this section, the fund may disclose the status or identity of an individual as a member, former member, retiree, deceased member, or beneficiary of the fund, as well as the individual's dates of service, date of death, last rank held, and the divisions of the fire department of the municipality in which service has been rendered.

(c) A determination and disclosure under Subsection (a)(2) of this section may be made without notice to the individual member, retiree, or beneficiary.

(d) The release of information concerning members, retirees, or beneficiaries to departments of the municipality, or to other municipal employee pension funds or systems of the municipality, in order to implement or advance the purposes of this article is permitted under this section. The release of that information does not constitute any waiver of confidentiality by the fund or any waiver as to confidentiality of the information under the statutes and policies governing the receiving municipal department or employee pension fund or system.

(e) The publication and provision by the fund of a retiree's address, e-mail address, telephone number, dates of service, and last rank held and of the divisions of the fire department of the municipality in which service was rendered, within compilations or directories of this information concerning fund retirees, is permitted under this section. The fund, in its sole discretion, may provide or distribute those compilations as it deems is in the best interest of the retirees in general. A retiree may prevent the publication under this subsection of information relating to the retiree by giving advance written notice to the fund.

(f) To carry out the provisions of Sections 13A through 13F of this article, the board and the fund must provide the municipal actuary under a confidentiality agreement the actuarial data used by the fund actuary for the fund's actuarial valuations or valuation studies and other data as agreed to between the municipality and the fund that the municipal actuary determines is reasonably necessary for the municipal actuary to perform the studies required by Sections 13A through 13F of this article. Actuarial data described by this subsection does not include information described by Subsection (a) of this section.

(g) A risk sharing valuation study prepared by either the municipal actuary or the fund actuary under Sections 13A through 13F of this article may not:

- (1) include information described by Subsection (a) of this section; or
- (2) provide confidential or private information regarding specific individuals or be grouped in a manner that allows confidential or private information regarding a specific individual to be discerned.

(h) The information, data, and document exchanges under Sections 13A through 13F of this article have all the protections afforded by applicable law and are expressly exempt from the disclosure requirements under Chapter 552, Government Code, except as may be agreed to by the municipality and fund in a written agreement.

(i) Subsection (h) of this section does not apply to:

- (1) a proposed risk sharing valuation study prepared by the fund actuary and provided to the municipal actuary or prepared by the municipal actuary and provided to the fund actuary under Section 13B(d) or 13C(b)(2); or
- (2) a final risk sharing valuation study prepared under Section 13B or 13C of this article.

(j) Before a union contract is approved by the municipality, the mayor of the municipality shall cause the municipal actuaries to deliver to the mayor a report estimating the impact of the proposed union contract on fund costs.

Sec. 18. Proportional Retirement Program.

(a) In this section:

(1) "Combined service credit" means the total amount of service credit a member has for participation in the fund plus service credit the member has in any participating retirement system.

(2) "Participating retirement system" means the retirement system established under Article 6243g-4, Revised Statutes, or Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, Vernon's Texas Civil Statutes), or a successor statute to either of those laws.

(3) "Program" means a proportional retirement benefits program established under this section that permits members to establish service credit for a proportional retirement benefit using combined service credit.

(4) "Service credit" means service or participation that is credited under the fund or a participating retirement system to establish service or participation requirements for a proportional retirement benefit.

(b) The board may maintain a proportional retirement program under this section.

(c) Under the program, a member who is eligible to participate may use combined service credit to determine eligibility for a benefit under this article. The member must have at least 20 years of combined service credit to receive a proportional retirement benefit. The member is subject to the same requirements and receives the same benefits, including enhancements, as a member who establishes retirement eligibility for the same amount of service credit without using combined service credit.

(d) A member may not:

(1) use service credit in a participating retirement system to meet the eligibility requirements for participating in a DROP under Section 5 of this article;

(2) receive service credit in the fund for the same service for which the member receives service credit in a participating retirement system; or

(3) receive a benefit under the program in an amount that is greater than the amount the member would have received for the same benefit without the program unless the greater amount results from a modification under Subsection (j) of this section.

(e) A person is eligible to participate in the program if the person is employed by the city, is covered by a participating retirement system, and is or has been a member of the fund.

(f) A member who is retired or participating in a DROP under Section 5 of this article may not participate in the program. A member may not receive a disability retirement benefit and a service retirement benefit under the program.

(g) In determining proportional retirement benefits under the program for a member who has participated in the fund for less than 20 years, the member is entitled to a monthly benefit in an amount equal to 1.7 percent of the member's average monthly salary multiplied by the number of the member's years of participation in the fund.

(h) A member who receives a disability benefit under a participating retirement system may receive a proportional disability benefit under the program as provided by Subsection (i) of this section.

(i) In determining disability retirement benefits under the program, the member is entitled to a monthly benefit in an amount equal to 1.7 percent of the member's average monthly salary multiplied by the number of the member's years of participation in the fund.

(j) The board may modify the program only to make the program's provisions compatible with the provisions of a participating retirement system. The board may not modify the program for the purpose of providing a new benefit to a member.

(k) If the board determines that the provisions governing a participating retirement system are not compatible with the provisions governing the fund under this article, the board may terminate the program. The board shall provide written notice to the executive director of the participating retirement system before the 30th day preceding the date of the program's termination. The board may reestablish the program at its discretion, subject to the requirements of this section.

(l) The board may adopt rules to implement and administer this section.

Enacted by Acts 1997, 75th Leg., ch. 1268 (H.B. 3170), § 1, e November 1, 1997; am. Acts 1999, 76th Leg., ch. 211 (H.B. 1173) effective November 1, 1999; am. Acts 2001, 77th Leg., ch. 87 (H 1-5, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. § 6, effective October 1, 2001; am. Acts 2003, 78th Leg., ch. §§ 1-13, effective September 1, 2003; am. Acts 2007, 80th Leg 1390), §§ 1-5, 7-12, effective May 18, 2007; am. Acts 2007, 80th Leg 1390), § 6, effective October 1, 2007; am. Acts 2017, 85th Leg., ch. 320 (S.B. 2190), §§ 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 1.07, 1.08, 1.09, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, effective July 1, 2017.