



*The Houston Firefighters'
Relief and Retirement Fund*

SUMMARY PLAN DESCRIPTION



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GUIDE TO YOUR PLAN

The Houston Firefighters' Relief and Retirement Fund's Summary Plan Description, or SPD, explains benefit provisions for you and your family.

PLAN SUMMARY

All descriptions of benefits and contributions contained herein relating to the Houston Firefighters' Relief and Retirement Fund ("HFRRF" or "Fund") and Tex. Rev. Civ. Stat. Art. 6243e.2(1) (the "Statute") are only accurate as of the date of the publication of this summary.

1. MEMBERSHIP ELIGIBILITY

You are eligible for membership in the plan if you start working as a firefighter for the Houston Fire Department before you attain age 36 and meet the minimum physical requirements.

You become a participant in the plan when you satisfy the plan's eligibility requirements, are assigned to the Fire Department payroll and begin making contributions to the plan.

If you transfer directly to the Houston Fire Department from another Texas city's fire department, you may be eligible to receive past service credit for participation in that other Texas city's fire pension system (see Transferring Credit).

2. PAYMENTS

If you are eligible for service or disability retirement benefits when you retire, you will receive monthly payments for your lifetime. When you die, your survivor(s), if eligible, will receive your benefits in accordance with the Fund's Statute.

3. CONTRIBUTIONS

Once you are accepted into the plan, you contribute, through biweekly payroll deductions, 10.5% of your total gross pay to the Fund. Your contributions to the plan are withheld from your pay before your federal income tax obligation is calculated. Your contributions do not, however, affect the total gross pay amount on which your pension benefits, and the contributions themselves, are calculated.

Benefits paid from the Fund come from 3 sources:

- Your contributions
- City of Houston contributions
- Investment returns of the Fund

4. RETIREMENT BENEFIT TYPES

The plan provides the following types of retirement benefits for firefighters and their eligible survivors:

(A.) Service Retirement

Service retirements are based off a percentage of a member's average monthly salary ("AMS"). Members are eligible for and may receive a service retirement as follows:

- 1) The member was hired as a firefighter prior to July 1, 2017, and the member has attained 20 years of service. AMS is based upon the member's highest 78 pay periods and overtime would only be included for those pay periods prior to July 1, 2017. Accrual rates for such a member's service retirement are as follows:
 - Service years 1-20 prior to July 1, 2017: 2.5%;
 - Service years after 20th year prior to July 1, 2017: 3%
 - Service years 1-20 on or after to July 1, 2017: 2.75%
 - Service years after 20th year on or after to July 1, 2017: 2.00%
 - No benefit percentage cap.

- 2) The member was hired as a firefighter on or after July 1, 2017, and the sum of the member's age in years and the member's years of participation in the fund equals at least 70. The AMS is based upon the member's last 78 pay periods with no overtime included. Accrual rates for such a member's service retirement are as follows:
 - Service years 1-20: 2.25%;
 - Service years after 20th year: 2.00%;
 - Benefit percentage capped at 80%

Service retirement payments are reported to the Internal Revenue Service as ordinary income.

(B.) Refund of Your Contributions

All members that terminate service with the Houston Fire Department with less than 10 years of service are entitled to receive a refund of their employee contributions without interest.

If eligible under the Statute, members that terminate service with at least 10 years of participation but less than 20 may elect refund of contributions made to the Fund:

- With interest computed at 5% simple interest for the member's contributions to the Fund made before July 1, 2017; and
- Without interest for the member's contributions to the Fund made on or after July 1, 2017.

If you elect a refund of contributions, you may request that the Fund issue the payment as a direct rollover.

(C.) Deferred Pension

For a member that was hired as a firefighter prior to July 1, 2017 and leaves the Fire Department after participating in the plan for at least 10 years but less than 20 years, you may choose to receive a deferred benefit. Your deferred benefit will begin at age 50, and you will receive 1.7% of your average monthly salary for each year of participation.

(D.) Disability Retirement

The Fund provides benefits for firefighters who become disabled on-duty or off-duty. You will not be entitled to a disability benefit if your disability is the direct result of a condition that pre-existed when you joined the Fund.

The Pension Benefits Committee reviews each request for disability benefits using its established policies and procedures. The application process may require 60 days or more before action is taken by the Pension Benefits Committee. You are considered disabled and entitled to some form of benefit if the Pension

Benefits Committee determines from your application, physicians' exams and other evidence that you are eligible for the particular type of disability benefit you are applying for, based on the Fund's Statute. The Pension Benefits Committee must determine that the condition is likely to be permanent for the benefit application to be approved. Disability retirement eligibility and benefit amounts are as follows:

1. Occupational On-Duty Disability: A member becomes disabled on duty and is no longer capable of performing the usual and customary duties of a firefighter. The benefit is calculated as the greater of 50% of the members average monthly salary or the service retirement the member otherwise would have been entitled to receive.
2. General On-Duty Disability: A member becomes disabled on duty and is no longer capable of performing any substantial gainful activity (earning wages on a full-time basis - 40 or more hours per week). The benefit is calculated as the greater of 75% of the members average monthly salary or the service retirement the member otherwise would have been entitled to receive.
3. Off-Duty Disability: A member becomes disabled while off duty and cannot perform the usual and customary duties of a firefighter. The benefit is calculated as the greater of 25% of the members average monthly salary plus 2.5% for each full year of participation in the Fund (not to exceed 50%) or the service retirement the member otherwise would have been entitled to receive.

If, at the time you entered the department, you passed a physical examination that did not show evidence of cancer or of a condition or disease of the lungs or heart, and you die or become disabled from heart disease, lung disease, or cancer, such death or disability shall be presumed to be job-related and on duty and you or your eligible survivors may be entitled to receive a disability benefit (either an occupational on-duty or general on-duty disability benefit, as described above, depending on the nature of your disability) from the Fund, unless the presumption is rebutted by clear and convincing evidence.

Keep in mind that tax laws affecting benefits can change, and they are complex. We urge you to seek the advice of a tax professional to interpret tax laws and revenue rulings and determine what is best for you and how you will be affected.

5. DEFERRED RETIREMENT OPTION PLAN (DROP)

Firefighters that were members of the Fund prior to July 1, 2017 have the option of entering the Deferred Retirement Option Plan (DROP) once they reach 20 years of participation. The DROP enables a firefighter to accumulate a separate sum of money toward retirement while still working as an active employee. The firefighter's monthly pension benefit amount is established as of the DROP entry date, and the value of the monthly pension benefit is credited to the firefighter's DROP account and all interest earned thereon. DROP account balances are available for distribution when the firefighter leaves the Fire Department, or the firefighter can elect to leave the DROP account balance with the Fund and take distributions according to Fund policy. An eligible surviving spouse can choose to maintain a DROP account with the Fund.

The DROP includes a Back-DROP provision. The DROP account of an active DROP participant can be recalculated based on what the account balance would have been had the participant elected the DROP up to three years earlier than he or she actually did. Your initial DROP entry date cannot be backdated prior to September 1, 1995, or prior to 20 years of credited service, and must be on the first of the month you select.

The maximum duration in DROP is 13 years. As of July 1, 2017, member contributions are no longer credited to the DROP account. For DROP participants who had at least 20 years of participation as of July 1, 2017, their monthly benefit at actual retirement would be increased by 2% for every full year of DROP participation for the first 10 years, for a maximum of 20%. There is a pro-ration of this benefit in the final year of DROP participation if less than a full year (2% divided by 12, or .166% per month).

6. DROP – FREQUENTLY ASKED QUESTIONS

What is the DROP?

The DROP is the Deferred Retirement Option Plan (DROP) that took effect September 1, 1995 as a retirement option available to members who were hired as firefighters prior to July 1, 2017.

How does the DROP work?

The DROP allows you to accumulate a lump-sum cash amount for retirement to be paid in addition to your monthly retirement benefit. Under the DROP, you determine your future monthly pension benefit while continuing to work as an active firefighter.

Here's how it works. Once you are eligible for a service retirement, you may enroll in the DROP. When you enroll, you "lock in" your service and benefit levels as of the date your participation in the DROP takes effect. You continue to work as an active firefighter and earn your normal pay. While you work, the Fund credits the value of your monthly retirement benefit (based on your service as of the date you entered the DROP) into a notional DROP account.

You can participate in the DROP for up to 13 years. As long as you participate, the value of the retirement benefit calculated for you upon entry into the DROP is credited to your account each month, and your account earns interest. When you leave the Fire Department, your DROP account balance will be distributed to you in a lump sum, or you can choose to leave the assets of your DROP account with the Fund to continue earning interest and make withdrawals in accordance with the policies and procedures of the Board. When you leave the department and retire, you will start to receive your monthly pension benefits.

Do I have to decide at the time I enroll in the DROP how long I will participate and keep working for the Fire Department?

No. You can participate from one month to 13 years. You can decide to stop working (and end your DROP participation) at any time during the 13 years.

Can I enter the DROP then change my mind?

You can withdraw your DROP application at any time prior to its approval by the Pension Benefits Committee. That withdrawal must be in writing. Once acted upon by the Committee, your decision is irrevocable.

Does DROP participation affect disability or line-of-duty death benefits?

A participant in DROP is ineligible for on-duty occupational disability benefits. In the case of on-duty death or on-duty general disability of a participant with a DROP account, the death benefit (100%) or disability benefit (75%) will be calculated as though the participant had not entered the DROP and will be paid to the eligible survivor(s) (in case of on-duty death) or participant (in the case of on-duty general disability). In addition, the DROP account that had accumulated to date will be available to the eligible survivor(s) (on-duty death) or participant (on-duty general disability).

Am I eligible for Cost-Of-Living Adjustments (COLAs) if I am participating in the DROP, and if I am, when do I receive a COLA?

No. As of July 1, 2017, active DROP participants are not eligible for a COLA.

Does anything else go in my DROP account besides my normal monthly benefit payments?

Yes. As of July 1, 2017, your DROP account will be credited with earnings at an annual rate equal to 65% of the previous 5 fiscal years compounded average. The annual rate will not be less than 2.5% and there is no maximum.

Can I remain active with the Fire Department after my 13 years of DROP participation?

Yes, but you cannot receive any money from your DROP account as long as you are an active employee. If you remain in active service the monthly benefit credits into your DROP account will cease, but the earnings (or interest credit) will continue to be credited to your DROP account. You will not be entitled to monthly pension payments until you leave active service with the department. Similarly, if you decide to retire and not participate in the DROP, you cannot later decide to return to active service and begin participating in the DROP.

Will I receive statements advising me of the value in my DROP account?

Yes. The Fund will provide each DROP participant with a balance statement quarterly. You may check your account at any time if you have enrolled on the Fund's website.

Although a separate accounting of its value is maintained, your DROP account is not separated from the assets of the Fund until a distribution payment is made. As such, your DROP account has no loan value and it cannot be used as collateral or guarantee.

What is Back-DROP?

Back-DROP is a provision that gives a DROP participant an option to go back to an earlier DROP date for up to 3 years prior to his/her original DROP election date. The date cannot be prior to September 1, 1995, and the participant must have at least 20 years of pension service on the effective Back-DROP date. The minimum Back-DROP period is one month and the maximum is 3 years, but the effective Back-DROP date must be on the first of a month. 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.

When may I Back-DROP? Can I change my mind after I sign the application?

You may Back-DROP immediately upon your DROP entry date. This option can be exercised at any time while you are in active service.

A member may revoke the Back-DROP election by notifying the Fund in writing no later than the earlier of the date the member leaves active service or the 10th business day after the date the member signs an application form for a Back-DROP.

How many times can I Back-DROP?

You may only Back-DROP once, unless:

- The Board determines that you have incurred a catastrophic injury or illness that will cause you to leave the Fire Department earlier than previously expected, and
- Your previous election was not for the maximum period allowed.

How is my Monthly Benefit increased when I exit DROP and retire?

When you exit DROP and retire, for DROP participants who had at least 20 years of participation on July 1, 2017 your monthly benefit will be increased by 2% for each full year of participation in DROP, up to a maximum of ten years. (A full year is considered to be completed twelve months from your DROP entry date.) If you do not complete a full year in the final year of DROP participation, the 2% will be prorated (.166%) for each month.

How is the DROP account money paid out and distributed?

When you leave the Department, your money will be distributed as you choose in one of the following ways:

- A check for the entire amount (less applicable withholding) will be made payable to you, or (if you prefer) electronically transferred to a bank or credit union account in your name, *or*
- The contents of your account will be transferred, in whole or in part, by the Pension Fund to an Individual Retirement Account (IRA) in your name, *or*
- The contents of your account will be transferred, in whole or in part, by the Pension Fund to an IRS qualified retirement plan (such as an employer-sponsored 401(k) plan).

When you elect to take money out of your DROP account, the Fund must take a minimum of 20% federal income tax out of the distribution. For individuals over 70 ½ years of age, if the distribution is a Required Minimum Distribution (RMD), you may elect 0 – 99% withholding, but only on the amount of the required minimum distribution

The contents of your account, in whole or in part, can be left with the Fund, subject to required minimum distribution rules. The Fund will account for your assets and you will earn interest at the same rate as normally calculated under the DROP. If you choose to leave your money in the Fund, you can make four withdrawals at any time during the calendar year (January to December) and/or set up either quarterly or monthly recurring payments.

How is my DROP distribution taxed?

If you authorize the Fund to roll over your DROP proceeds directly to an IRA or another qualified retirement plan, or if you choose to leave your assets with the Fund, there are no immediate tax consequences. You would pay taxes on these funds only when you receive a distribution from your IRA, qualified retirement plan, or from the Fund.

If you receive the DROP account proceeds, the distribution will be treated as ordinary income to you in the year you receive it. The minimum federal income tax rate that must be withheld is 20 percent.

If you receive payment and are not at least age 50 by the end of the calendar year in which you leave active service, or if you withdraw money from a rollover account before you reach age 59½, you may

be subject to a 10 percent early distribution tax penalty.

Keep in mind that tax laws can change, and they are complex. We urge you to seek the advice of a tax professional to determine what is best for you and how you will be affected.

What happens to my DROP account proceeds in the event of my death while in the DROP?

In accordance with Section 5(j) of Article 6243e.2(1), the following apply:

- (1) If there is an eligible spouse and no eligible children, your entire DROP account balance is paid to the eligible spouse or; the eligible spouse may elect to keep the balance in the Fund.
- (2) If you die and are survived by an eligible spouse and eligible children, one-half of your DROP account balance is paid to the eligible spouse (or the spouse may elect to keep the balance in the Fund), and the remaining one-half is divided equally among the eligible children. (Note: *Only the eligible spouse's half may be kept in the Fund.*)
- (3) If there are eligible children but no eligible spouse, your DROP account balance is divided equally among the eligible children, which, for this purpose, includes children who are less than 23 years of age, unmarried, and full-time students;
- (4) If there is not an eligible spouse and there are not any eligible children, your DROP account balance can be paid to a dependent parent; and
- (5) If there is not an eligible spouse, eligible children, or an eligible parent, your DROP account balance is distributed in accordance with your beneficiary designation as filed with the Board, or to your estate if there is no beneficiary.

Note: You may elect to extend survivor benefit payments to children through age 23, unmarried, and full-time college students when there is an eligible spouse. You must complete the appropriate forms in order to notify the Fund of your desire to extend survivor benefits to a child that meets these criteria. Otherwise, survivor benefits would be extended as outlined in the Statute.

You may also elect to designate an adult child (or children) as an eligible child (or children) for the DROP proceeds. "Beneficiary adult child" is a child of a member by birth or adoption who is not an eligible child; and is designated as a beneficiary of a member's DROP account by valid designation under Section 5(j-1) of the Statute.

If I marry or re-marry after entering the DROP, does my new spouse qualify as an eligible survivor for my DROP account benefits?

After the effective date of your participation in the DROP, any person that subsequently becomes your spouse will be eligible for a reduced portion of your DROP account, based on the percentage of time this spouse was married to you between the date of your DROP election and your last day of active service. The remainder of your DROP account would be distributed to other eligible survivors, as provided for in the Statute. After leaving active service, any person that subsequently becomes your spouse will not be considered an "eligible spouse". You may designate such spouse on a "Beneficiary Designation Form". In the event of your death, your DROP account would be distributed to eligible survivors, if any. If there are no eligible survivors, the DROP account would be distributed to the designated beneficiary.

What happens if I'm divorced but there has been no Qualified Domestic Relations Order (QDRO) letter ruling from the Fund?

The Fund will not distribute DROP benefits or monthly pension benefits to alternate payees without a fund approved QDRO.

If a portion of my DROP is awarded to my ex-spouse through a QDRO how will the Fund administer it?

For an active DROP participant, the full value of your monthly benefit is always credited to your DROP account. If a QDRO is in place and is specifically attached to the proceeds of your pension either before or after you enter the DROP, payments to an alternate payee will not commence until you actually leave the Fire Department.

What do I need to do when I'm ready to leave the Department and exit the DROP?

The timing of your departure is your responsibility, but in order to maximize your retirement benefits, contact the Fund at (281) 372-5100 or (800) 666-9737 and ask for Member Services when you start thinking about retirement.

To ensure that all members considering retirement are fully informed regarding their pension options and retirement benefits, you are required to attend a personal pre-retirement counseling meeting with the Fund to discuss your pension options prior to applying for retirement.

After completing your Pre-Retirement Counseling meeting, contact the HFD Human Resources Department to schedule an appointment to complete the appropriate documents to separate from active service.

Once you have completed your retirement forms with the City of Houston, you should contact the Fund to schedule an appointment to complete the Fund's retirement forms.

As of July 1, 2017, unused leave pay for DROP participants at retirement will be sent from the City of Houston to the Fund and credited to your DROP balance. Upon receiving the unused leave pay from the City of Houston, the Fund will credit it to your DROP account and notify you by email.

(Note the City of Houston determines the timing, frequency, and amounts sent to the Fund).

7. POST RETIREMENT OPTION PLAN (PROP)

The Post Retirement Option Plan (PROP) became effective October 1, 2007 as an option for retired members and eligible spouses to defer taxable pension benefits to a notional account at the Fund, and accrue earnings on the balance each month.

As of July 1, 2017, a PROP participant may not have any additional amounts credited to his or her PROP account, nor shall any member be allowed to elect to participate in the PROP if the member was not already a PROP participant. PROP participants prior to July 1, 2017 may keep their balances with the Fund and will continue to accrue earnings.

8. ELIGIBLE SURVIVOR BENEFITS

The plan includes provisions for your eligible survivors and beneficiaries if you are entitled to receive, or are receiving, a benefit from the Fund when you die. Eligible survivors are defined exclusively in Section 1 of the Statute and the distribution of such benefits to eligible survivors and beneficiaries is outlined in

section 7 of the Statute. No benefit will be paid if you die from suicide or attempted suicide before you have participated in the Fund for two years.

If you do not have any of the eligible survivors as defined in section 1 of the Statute, you can designate a beneficiary to receive (i) a refund of your contributions if you die before retirement so long as you were eligible for such refund, and/or (ii) any DROP or PROP balances you have remaining upon death.

For DROP and PROP purposes only, a DROP or PROP participant may designate an adult child (by birth or adoption) to be an eligible survivor for DROP or PROP account benefits (not for the monthly annuity). A member may also designate a Trust to receive the benefits payable to any eligible survivor or beneficiary other than an eligible spouse.

If a member is married after leaving active service, the new spouse would not be entitled to the full spouse's survivor benefit until the retiree and spouse have been married for five years. If the retiree dies before five years of marriage, the monthly pension benefit would be 20% for each year of marriage.

Your eligible survivors will receive a benefit equal to 100% of your average monthly salary if (i) you die as an active firefighter from an injury suffered on duty; or (ii) prior to being granted a disability benefit, you die from a disability suffered on duty. On-duty death benefits are tax-exempt if the firefighter is killed on-duty.

If you die from an off-duty illness or injury before you retire, your eligible survivor(s) will receive a survivor benefit equal to the benefit you would have received if you had retired with an off-duty disability on the day you died.

If you die after retirement your eligible survivor(s) will receive a survivor benefit equal to the benefit you were receiving at the time of your death.

Eligible survivors are entitled to a one-time death benefit at the time of your death in the amount of \$5,000 if you are receiving benefits when you die and \$10,000 (\$5,000 death benefit and \$5,000 additional retirement benefit payments) if you die before you retire.

If you retired on a deferred retirement and die before you reach age 50, your eligible beneficiaries can receive a survivor benefit equal to the benefit you would have received when you became age 50. Payments begin on the date you would have been age 50. If you retire on a deferred retirement and you are at least 50 years old when you die, your eligible beneficiaries' survivor benefits will be equal to the benefit you were receiving.

A surviving spouse of more than one firefighter 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.

Survivor benefits for DROP participants are similar to monthly benefits. One important difference is that if a member gets married after entering the DROP, the spouse's DROP benefit would be based on the period of time he/she was married to the DROP participant, while the participant active in DROP.

9. OTHER PENSION BENEFIT PROVISIONS

(A.) Transferring Credit

If you enter the Houston Fire Department after serving in a fully paid fire department of another city in Texas with a similar fund benefiting only firefighters of that city to which the firefighter contributed (contact the Fund and ask for a Member Services Representative for a list of approved cities), you may

apply to have your prior service credit included as years of participation in the plan as long as you meet the criteria laid out in section 16 of the Statute.

If you choose not to apply for prior service credit, you must sign a waiver stating your intent to refuse prior service credit. Your participation in the plan will not be considered until your application for prior service credit is granted or you sign the waiver.

(B.) Qualified Domestic Relations Orders (QDROs)

If a participant (or retiree) is divorced, the parties and the courts usually consider the participant's pension benefit an appropriate subject for inclusion the couple's divorce decree.

The Board has adopted the provisions of Chapter 804, Subchapters (A) and (C) of the *Texas Government Code*. This portion of the *Government Code* governs the direct payment of pension benefits by a pension system to someone other than a participant. Members are made aware of any QDRO activity that may be initiated against them.

A Domestic Relations Order (DRO) is a court order specifying how marital assets and child support responsibilities are to be divided among the divorcing parties. The Fund will only pay awarded benefits pursuant to a QDRO, directly to the former spouse, child or other individual specified in the decree. A QDRO is a DRO that has been submitted to the Board for review and has been found (by the Board's designated administrator) to satisfy government code provisions and the QDRO requirements contained in the Pension Benefit Policies.

In order to expedite the review process and limit costs to the participants, the Board has adopted several form QDROs. The form QDROs contain sample language acceptable to the Board. The forms do not mandate how you and your former spouse should divide your pension benefits, and you are not obligated to use the form QDROs. You and your legal counsel should determine any decisions regarding entitlement of benefits. Please bear in mind that you or your spouse should submit your DRO for review in plenty of time to allow for a ruling on its status as a QDRO before the entry of the divorce decree. If you fail to allow enough time for review, you may incur additional court costs, even after your decree is final.

If you need information on how a divorce will (or could) affect your benefits, contact the Fund at 281-372-5100 or 1-800-666-9737 and ask for a Member Services Representative. We can provide you with the current value of your pension benefit and contributions, as well as a copy of the appropriate QDRO forms.

(C.) Applying for Benefits

You or your eligible beneficiaries must file a written application with the Board and follow the policies established by the Board before any benefits will be paid.

(D.) Appealing a Decision

If the Pension Benefits Committee denies your application for disability benefits, you will be notified by certified mail of the decision. If you disagree with the committee's decision, you have 10 calendar days from the date you received notification to request, in writing, an appeal before the Board.

You may provide additional information regarding your application to the Board. Based on the facts obtained at the Board meeting, the Board will make a final determination of your application.

The Board has the final authority to grant or deny any application for disability benefits.

If you disagree with a decision made by the Board about a benefit, you may appeal the Board's decision to state District Court. (See Section 12 of the Statute.)

(E.) Breaks in Service

If you leave the department to serve in the U.S. Armed Forces during a war or national emergency and return to the department immediately thereafter, the time you serve may count as continuous years of participation when determining your benefit from the plan. If you served in the U.S. Armed Forces and need further information please contact the Fund at 281-372-5100 or 1-800-666-9737 and ask for a Member Services Representative.

If you leave the department for any other reason, your participation before you leave will count only if you return to the department within five years and begin paying into the Fund. The period of time you are away from the department and not contributing to the Fund will not count toward your years of participation. Your eligibility for re-entry into the Fund will depend on certain conditions laid out in Section 8.00 of the Pension Benefits Policies

(F.) Adjustment to Your Benefit (COLAs)

Benefits (including survivor benefits) from the plan may be adjusted each year with a Cost of Living Adjustment (COLA) and, if you are eligible for such COLA, added to your monthly benefit, in accordance with section 11 of the Statute.

(G.) Annual Supplemental Benefit

A supplemental benefit payment will be issued to eligible retirees and survivors (see Section 10A of the Statute) each January. The amount of the supplemental benefit is based on your date of retirement and the amount of your annual benefit (excluding the monthly supplemental benefit of \$150) in comparison to an annual minimum income level.

(H.) Social Security

As a firefighter, you are not eligible to receive Social Security benefits under the plan. But you may be eligible to receive Social Security benefits based on employment other than with the Houston Fire Department.

10. IMPORTANT NOTICE

This summary describes many of the principal features of the Houston Firefighters' Relief and Retirement Fund pension plan. Remember, this is only a summary.

The plan's complete provisions are set forth in Article 6243e.2(1) of *Texas Civil Statutes*, which governs the operations of the plan. A retyped version of the Statute appears in this booklet. The Board has also adopted formal policies and procedures pursuant to the Statute, which are also reproduced in this booklet.

While this summary includes most of the facts about the plan, it does not attempt to describe all provisions or limitations as they apply in individual situations. In case of any conflict between this summary, the Statute, and the Policies and Procedures, the Statute and Policies and Procedures will prevail.

Note: This booklet is not a contract for, nor a guarantee of, present or continued employment or benefit disbursement.

11. MEMBER SERVICES STAFF

If you have any questions about your benefits, call the Fund at **281-372-5100** or **1-800-666-9737**. **You may also contact us at memberservices@hfrf.org**. The following Member Services Representatives will be able to assist you:

Dalia “Dolly” De La Cruz, CEBS - Director of Member Services

Tony L. Pierce, AFC® - Member Services Education Manager

Michele Word - Benefits Administration Manager

Kristi Marx, MSW, LSW - Family Services Counselor

Elizabeth A. Carrizal - Sr. Benefits Specialist

Sharon R. Johnson - Sr. Benefits Specialist

Diana Waterman – Member Services Coordinator

POLICIES AND PROCEDURES

Pension Benefits Committee

The following procedures have been approved by the Houston Firefighters' Relief and Retirement Fund Board of Trustees. The Board reserves the right to amend and add to these procedures. Amendments and additions to the Policies and Procedures Manual will be printed in the monthly minutes of the Board meetings. For the most current procedures, please contact the Fund office.

Board and Committee Procedures

14.00 Pension Benefits Committee

- 14.01 The Pensions Benefits Committee is delegated the authority by the Board of Trustees to act upon all applications, requests and/or matters regarding the granting, continuation, or discontinuation of pension benefits and of entrance or re-admission into the Fund; to review and act upon all applications for service, disability, and deferred retirements, including those service retirements represented by applications for participation in the Deferred Retirement Option Plan (DROP); and to receive and consider any and all accompanying documents, reports, or addenda thereto. Unless otherwise appealed under Section IV, 5.10 of these procedures, such actions of this Committee shall be final and noted at the next regular Board meeting.
- 14.02 The Pensions Benefits Committee shall, at least annually, review recommendations made by staff regarding the disability rolls. The Committee may, at any time, compel benefit recipients to undergo, at the Fund's expense, a physical examination to certify that the recipient is still disabled, and the level of disability or extent of such disability. The Committee may further make recommendations to the Board regarding the suspension, termination, or reduction of any recipient's benefit.
- 14.03 The Pension Benefits Committee shall review the employment activities and earnings reports filed annually by Section 6(c) disability retirees and beneficiaries who are eligible for survivor benefits because of their status as disabled individuals. The Committee may recommend to the Board that a recipient's benefits be suspended, reduced, or terminated on the basis of the report or on the basis of the recipient's failure to timely file such reports.
- 14.04 The Executive Director shall approve a report containing majority recommendations of the Pension Benefits Committee. This report shall be further approved by the Committee Chair before presentation to the full Board for its consideration and record.
- 14.05 The seven (7) Trustees comprising the Pension Benefits Committee shall be as follows: those Trustees described in Section 2(c) of the Statute as holding Positions I, II, III, IV, V, the Trustee holding the position described in Subsection 2(b) (4) of the Statute and one of the Trustees serving under Subsection 2(b) (5) of the Statute, which Trustee shall be appointed to the Committee by the Board Chair. A vacancy on the Pension Benefits Committee in any of positions I through V or the position described in Subsection 2(b)(4) of the Statute shall be filled when a Trustee succeeds to such position to fill the vacancy.
- 14.06 Any periodic reports from staff to the Committee which do not require any Board action may be listed together as sub-items under one agenda item and collectively noted by the Committee Chair for the Committee as received by the Committee, and there not need be separate discussion on such

items unless requested of the Committee Chair by a Committee Member, the Executive Director or the Chief Legal Officer, either prior to or during the meeting.

14.07 The following items, requiring a Committee action but which generally may be considered routine in nature may be approved collectively with a single motion and vote and for such purpose may be placed on a "Consent Agenda" within the regular agenda for a Committee meeting required to be posted under the Texas Open Meetings Act. For items on the Consent Agenda there need not be separate discussion and voting on such items unless requested by a Trustee, the Executive Director or the Chief Legal Officer or if required by applicable law. Upon such request to the Committee Chair or other presiding officer at the Committee meeting by one of the aforementioned persons whether prior to or during the meeting any such item shall not be voted upon as part of the Consent Agenda and instead shall be considered in the same manner as an item that is not on the Consent Agenda receiving opportunity for its own discussion motion and vote:

- (a) Applications for membership into the Fund, but only if a written staff report or submission to the committee indicates that each applicant has meet all the requirements and further indicates the appropriate pension entrance date relating to the applicants.
- (b) Applications for participation (entry) in DROP and PROP, but only if a written staff report or submission to the committee indicates that each applicant has met all requirements for participation in either DROP or PROP, as applicable to each applicant.
- (c) Applications for reinstatement into the Fund, but only if a written staff report or submission to the committee indicates that all requirements have been met as to each such applicant.
- (d) Applications for prior service credit, but only if a written staff report or submission to the committee indicates that all requirements have met as to each such applicant.

1.00 **Membership** - (Reference to Section 13 of the Statute)

1.01 All firefighters, as a condition of membership in the Fund, shall make an election on a form provided by the Board as to whether they elect to transfer under the provisions of Section 16 of the Statute, forfeit all credit from the system from which they transferred, or whether the provisions do not apply to them.

1.02 "Active Service" shall generally mean service as a full-time, fully paid, active, classified member of the Houston Fire Department. In computing the time or period for retirement for length of service, any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service. (For additional information on military leave, see Section 17.00 of this policy.) Except for the military service described above, credit for prior service shall be given only if a member returns to the classified service within five years from the date of termination. (Reference to Section 11 of the Statute)

1.03 Contributions for members on leave pursuant to Section 1.02 shall be made by the member and the City of Houston during any time in which the employee is paid and shall be based on the amount paid to the member. (Reference to Section 13 of the Statute)

1.04 Contributions will not be required by the member or the City if such member is not being paid while on leave pursuant to Section 1.02.

- 2.00 **Applying for Service Retirement** - (Reference to Sections 4 and 5 of the Statute)
- 2.01 Applications for pensions must meet all requirements of the Statute and the Board of Trustees' Policies and Procedures.
- 2.02 Applications for pensions are to be submitted on approved forms to the Director of Member Services. However, a member who is entering DROP in conjunction with filing a pension application shall submit such application in accordance with Section 3.03 of this Policy.
- 2.03 Applicants may withdraw pension applications at any time before the earlier of Committee approval of the application or the date that the payment request is sent to the bank for payment. Requests to withdraw must be made in writing to the Fund.
- 2.04 For service retirements, the effective date of retirement shall be the day following the last day on the payroll of the Houston Fire Department unless the member chooses as an effective date the last day the member performs his/her duties as a firefighter.
- 2.05 Members approved for service retirement will receive a \$5,000 lump sum benefit payment as either a cash distribution, less applicable taxes, or as allowed in Section 14.00

3.00 **DROP Policies and Procedures**

3.01 Purpose

The purpose of this policy is to provide a coordinated and fully documented process for applicants to enter the Deferred Retirement Option Plan ("DROP") of the Houston Firefighters' Relief and Retirement Fund ("Fund") which system of pension benefits is set forth in the Statute. This policy is intended to provide those associated with the process (the Fire Department of the City of Houston, members of the Fund, members' statutory beneficiaries, the Fund's Board of Trustees ["Board"], and the Fund's staff) with a detailed outline of the steps, time frames, and rules regarding DROP and the processing of applications for participation in DROP. Policies relating to the DROP are only applicable to those members eligible for DROP participation under Tex. Civ. Stat. 6243e.2(1).

3.02 Delegation of Authority

The Pension Benefits Committee is delegated the authority by the Board of Trustees to review and act upon DROP applications, which includes a service retirement application.

3.03 Applying for DROP

- A. A member who desires information concerning DROP, but is not yet prepared to participate in DROP may:
request a non-binding verbal estimate of the amount of his or her DROP benefit; obtain a non-binding estimate on the Fund's website; and/or schedule an appointment with the Fund to discuss DROP, during which a non-binding estimate of the amount of his or her DROP benefit can be made.
- B. A member of the Fund who desires to participate in DROP must schedule DROP counseling with the Fund ("Appointment").

- C. The appointment must be scheduled prior to a member's date of participation in DROP. Participants will be advised that in order to complete necessary requirements when applying for the DROP, that the appointment must be scheduled not later than forty-five (45) calendar days prior to the member's intended effective date of participation in DROP.
- D. Attendance at the appointment is a mandatory condition of participation in DROP. It is recommended that a participant's spouse also attend the appointment.
- E. The appointment must be scheduled during the normal business hours of the Fund.
- F. A member must bring the following items to the appointment:

- a clear and legible document providing proof of the member's age;
 - if married, a clear and legible copy of his or her marriage certificate;

- the social security number and a clear and legible copy of the birth certificate for any child under the age of twenty-three (23), as well as the social security number, copy of the birth certificate, and documentation of disability for any child whom the member believes to be disabled and potentially entitled to survivor benefits from the Fund; the social security number for any parent of the member who is financially dependent on the member. The member must also provide proof that the parent is financially dependent on the member; and a certified copy of the member's divorce decree and/or property settlement agreement, if any; and a copy of the Fund's letter on the qualified status of the Domestic Relations Order (DRO).

- G. During the appointment, staff will: inform the member of the contents of this policy and provide an overview of the DROP program including a general description of the potential tax consequences and the irrevocable nature of the DROP election. The staff will also provide an application for participation in DROP ("Application"), and the DROP beneficiary election form ("DROP Beneficiary Form"); encourage the member to seek professional tax and/or legal guidance before entering the DROP; respond to any questions the member may have concerning the contents of this policy, the Statute, the Application, and the DROP Beneficiary Form; assist the member in completing the Application should the member voluntarily choose to elect to participate in DROP; accept the DROP Beneficiary Form; and for members who have QDRO's on file with the Fund, inform the member what impact the QDRO will have on his or her monthly retirement benefit and DROP account. The member's DROP election will not cause benefit payments to an Alternate Payee to commence under any QDRO applicable to the member. A QDRO will not affect applicable contributions to the member's DROP Account. However, a QDRO may affect the amount of any distribution the participant may receive from the DROP Account, but only to the extent that the QDRO specifically awards a dollar amount or a percentage of the member's DROP Account to an Alternate Payee.
- H. A member who elects to participate in DROP must sign the Application, initial every page, and must verify in writing that he or she: understands the terms and conditions of DROP, as expressed in this policy and as set forth in Section 5 of the Statute specifically, the irrevocable nature of the participant's election to enter DROP;

- in making the DROP election, has reviewed Section 5 of the Statute and this DROP policy and fully understands the terms and conditions of the DROP program;

- has reviewed and confirms that the monthly retirement benefit reflected in the pension calculation attached to the participant's DROP Application is correct.; has been advised by the

- Fund that he or she should consider seeking advice from a professional tax advisor; and understands that by electing to participate in DROP, he or she is also electing to take a distribution of that portion of his or her benefits from the Fund payable from the participant's DROP account, in a form other than a life annuity.
- I. DROP Applications must meet all requirements of the Statute and the Fund's Policies and Procedures.
 - J. Applications must be completed and submitted to the Fund at least thirty (30) days prior to the desired effective date of DROP participation.
 - K. A member's DROP Application will be reviewed by the Pension Benefits Committee.
 - L. Applicants may withdraw DROP applications at any time before the Committee has approved the application. Requests to withdraw must be made in writing to the Committee.
 - M. After the approval of the Application, the Fund will: notify the member of the approval of the Application including:
 - (a) the exact calculation of the original benefit amounts to be credited to the member's DROP account;
 - (b) the approved date of the member's DROP Application and the date on which the member shall begin receiving monthly credits to his or her notional DROP account.
 - N. In the event that an active member has a reasonable belief in the imminent possibility of the loss of his or her life (whether by reason of a medical condition or surgery), the member who is eligible to participate in DROP (and elects to do so) may forego the period of at least 45 days between scheduling a DROP appointment with the Fund (upon acceptance by Member Services) and the member's date of participation in the DROP {as required in Section 3.03 (C) of this policy}; and/or the period of at least 30 days to complete and submit the DROP application prior to the date of DROP participation. Once the member's application is approved by the Fund, the election to enter DROP is irrevocable.

3.04 Participating in DROP

- A. The Fund will provide each DROP participant with a balance statement of his or her DROP account quarterly.
- B. The Fund will also advise the participant that he or she should consult with the appropriate Fire Department or City payroll personnel in order to make an informed decision about the advantages or disadvantages of particular dates for leaving the Houston Fire Department payroll.
- C. A member's DROP benefits will be accounted for separately by the Fund, although the member's assets will not physically be separated from other Fund assets until distribution. (Reference to Section 1(7) of the Statute) The monthly benefit and interest earnings will be credited to the notional DROP account on a monthly basis.
- D. A "DROP participant" is a DROP participant who has not yet left the Fire Department payroll. A "post-DROP participant" is a DROP participant who has left the Fire Department payroll

and participated in DROP. The DROP account of any post-DROP participant and of any DROP participant will be credited with the Fund's earnings at an annual rate equal to 65 percent of the compounded average annual return earned by the Fund over the preceding 5-year period with a minimum annual rate of 2.5% per the Statute.

- E. Applicable contributions to the member's DROP Account will not be affected by a QDRO applicable to the member.
- F. A DROP participant is still a member of the Fire Department, and as such remains eligible to vote with respect to Fund matters, including, but not limited to, the election of pension Board Members and any required vote pursuant to Section 10 of the Statute. In addition, pursuant to the Statute, any member of the Fire Department is eligible to serve on the Board of Trustees. A post-DROP participant is eligible to vote in such elections and serve as a Trustee pursuant only to Section 2 of the Statute.
- G. If a DROP participant remains in active service after the end of the participant's 13th year of DROP participation, after such 13 year period, the DROP participants monthly benefit will not be credited to the participant's DROP account. The participant will not be entitled to receive at any time, his or her monthly benefit attributed to the period of time between his or her 13th year of DROP participation and his or her termination of active service with the Fire Department. On or after July 1, 2017 a DROP participants contributions to the Fund shall not be credited to the member's DROP account, except as provided in Section 5(b-2) of the Statute.
- H. After the end of a DROP participant's 13th year of DROP, the DROP participant shall not be able to exercise a Back-DROP provision.

3.05 Terminating Active Employment

- A. Upon retirement a Distribution Form and a Special Tax Notice is provided to the member.
- B. Based on the election made by the post-DROP participant on the Distribution Election Form, a benefit equal to the member's DROP account balance will be distributed or maintained by the Fund, or partially distributed with the balance maintained by the Fund after the member terminates service with the Fire Department. (Reference to Section 5(e) and 5(f) of the Statute)
- C. If a member who participates in DROP terminates his or her employment with the Fire Department and is subsequently re-hired as a firefighter, he or she will not be entitled to a retirement pension during such period of re-hire. In addition, he or she may only re-join the Fund subject to all of the terms and conditions of his or her DROP election. This means that such re-hire will not accrue any additional pension service or compensation for retirement pension purposes and such re-hire shall be subject to the 13 year maximum participation limitation as outlined in Section 3.04.

3.06 Distributions from DROP

- A. By virtue of electing to participate in DROP, a participant is also electing to take a distribution of that portion of his or her benefits from the Fund payable from his or her DROP account in a form other than a life and survivor annuity, and a post-DROP participant's distribution options (or those of his or her eligible survivor or beneficiary, if applicable) with respect to his or her DROP account at the time of termination of employment, will be limited to the forms of distribution set forth in Section 3.06B.

- B. To the extent permissible under federal tax laws, payment of a post-DROP participant's DROP benefit can be made in the following forms: a single sum distribution of the balance in the DROP account (Reference to Section 5(e) of the Statute); or partial payments as the post-DROP participant may elect from time to time to receive, in writing, using such form or forms, and following such specific procedure or procedures, as the Fund may require. (Reference to Section 5(f) and (g) of the Statute). Such partial payments shall be subject to minimum distribution amounts as set by the Board and may be made:
- (1) up to four times a year on any Fund business day; and/or
 - (2) in recurring (i) monthly distributions; or (ii) quarterly distributions.
- C. A post-DROP participant can elect to receive his or her form of distribution by filing a completed Distribution Form with the Fund.
- D. The Fund will provide post-DROP participants with Distribution Forms upon request. From and after April 1 of the calendar year following the calendar year in which occurs the later of the post-DROP participant's attainment of age 70½ or his or her leaving the Fire Department's active service, a post-DROP participant's Distribution Form shall become irrevocable, except that a post-DROP participant may elect at any time to receive a single payment of his or her entire remaining unpaid DROP balance. (Reference to Section 5(e)-(h) of the Statute)
- E. DROP Distribution Forms will be processed by the Fund on a regular basis.
- F. No DROP benefit will be paid to a beneficiary (either statutory or designated) until such time as the Fund receives sufficient documentation of the DROP participant's death. A Death Certificate (or Pending Death Certificate) would be deemed "sufficient documentation" of a DROP participant's death. (Reference to Section 5(l) of the Statute)
- G. Pursuant to a QDRO, if an alternate payee is specifically awarded a dollar amount or a percentage of the member's DROP account, such amount or percentage will be distributed in the form specified in Subsection C above in accordance with the member's election. Any alternate payee entitled to distribution of a DROP benefit will be provided with a Tax Notice, Distribution Election Form, and Withholding Election Form (as applicable) and will be requested to complete and return the Forms prior to a distribution.
- H. Notwithstanding any other provision of this Policy, in connection with a post-DROP participant's attainment of age 70½ (or in connection with the commencement of benefits of a post-DROP participant who leaves the Fire Department's active service after his or her attainment of age 70½), the post-DROP participant must provide the Fund with a new DROP Distribution Form requesting the Required Minimum Distribution (RMD) for the calendar year (in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986). If the Fund does not receive a distribution form by December 1st, the Fund may distribute the RMD to the post-DROP participant's account or address on file with the Fund.

3.07 Beneficiary Designation for DROP Participants

- A. Should a DROP participant or post-DROP participant die before complete distribution of the member's DROP account, the member's DROP account balance may be paid to the member's eligible spouse, or retained in the Fund as outlined in Section 5(j) of the Statute. Other eligible survivors or designated beneficiaries must take a complete distribution of their DROP funds as

soon as administratively practicable after the member's date of death. A member may designate an adult child (or children) to receive DROP account balances as established in Section 5(j-1) of the Statute.

A member's parent may in some cases be an eligible survivor under Section 5(j) of the Statute, but only if the parent was dependent on the member immediately prior to the member's death. An applicant will be considered a dependent parent only if the applicant submits proof, satisfactory to the Board of Trustees, that:

the applicant is the father or mother of the member for purposes of the intestacy laws of the State of Texas, except that a father or mother by adoption must have legally adopted the member prior to the member's 18th birthday; and in the year immediately preceding the member's death, the member had claimed the applicant as a dependent on his/her federal income tax return. In the event the member did not make such claim, verification that at the time of the member's death, the member was providing at least one-half of the applicant's actual support beginning any time during the same tax year of the member's death may also be deemed sufficient proof of dependency. Support shall include, but not be limited to, the fair rental value of the applicant's dwelling (including utilities), the cost of clothing, food, medical and dental care, transportation, entertainment, and recreation.

In no instance shall DROP account balances payable after a member's death to a beneficiary other than a member's eligible spouse accrue interest or other increases after the member's date of death. *If the correctness of any person's status as a beneficiary or the amount of DROP account balance payable to a beneficiary is in question (as determined in the sole and sound discretion of the Fund's administration), whether explicitly or implicitly, due to a pending legal proceeding of which the fund has actual knowledge, then any portion of such balance to be paid to the eligible spouse that is not in dispute shall be distributed or retained per section 5(j) of the Statute. The remainder shall be held by the fund pending resolution of the issue in pending litigation and any remaining balance that has been resolved as payable to the eligible spouse shall be accorded interest up through such resolution as though the eligible spouse had elected to retain that remainder to the date of resolution as outlined in section 5(j).*

- B. A DROP participant may designate a beneficiary to receive, upon his or her death, the balance of his or her DROP account, in the event there is no eligible survivor. (Reference to Section 5 (j) of the Statute)
- C. Should a DROP participant or post-DROP participant desire to change his or her designated DROP beneficiary, the DROP participant or post-DROP participant must execute a new DROP Designation of Beneficiary Form, which will be provided, upon request, by the Fund. The effect of the DROP Designation of Beneficiary Form is to revoke all prior beneficiary designations for the DROP participant's or post-DROP participant's DROP benefits. The change in beneficiary designation will only be effective upon delivery of the new DROP Designation of Beneficiary Form to the Fund prior to the DROP participant's or post-DROP participant's death.
- D. A member should designate a contingent DROP beneficiary in the event the first DROP beneficiary dies prior to the member.
- E. Any survivor or beneficiary eligible for payment under this section must request and apply for such payment by completing forms required by the Fund in addition to providing the marriage and/or birth certificate(s) necessary to verify eligibility. No death benefit will be processed for

payment without a Death Certificate (or Pending Death Certificate) certifying the death of the member. In instances where payment is made through a trustee or to an estate, verifiable proof of trusteeship must also be provided or be on file.

3.08 DROP Distribution regarding Death or Disability

In the case of on-duty death or on-duty general disability of a participant with a DROP account, the death (100%) or disability benefit (75%) will be calculated as though the participant had not entered the DROP and will be paid to the eligible survivor(s) (in the case of on-duty death) or participant (in the case of on-duty general disability). In addition, the DROP account that had accumulated to date will be available to the eligible survivor(s) or designated beneficiaries as outlined in Section 3.07 (in the event of an on-duty-death) or participant (if member receives an on-duty general disability).

3.09 Back-DROP Provision

A DROP participant will have the option to exercise a Back-DROP provision for up to three years prior to his/her original DROP election date. The participant must have at least twenty years of pension service on the effective Back-DROP date, and this date cannot be before the inception of the DROP (September 1, 1995). The Back-DROP date may be for a period of one month to three years, but must be on the first of a month. If the Back-DROP provision is exercised, a DROP participant's initial benefit amount and entire DROP account will be re-calculated, with the DROP election date changed to the Back-DROP date. This provision of the DROP may be exercised one time only, unless you incur a catastrophic injury or illness which causes you to leave the Fire Department earlier than previously expected, and your previous election was less than 3 years. There will be a rescission period which shall be the earlier of ten business days from the date that the "Back-DROP Application" form is signed or the last date the member is on the fire department payroll. If the participant changes his/her decision during this period, he/she shall notify the Fund office in writing to cancel the Back-DROP election. This form must be received by the Fund during the rescission period in order to reverse the earlier decision.

3.10 Unused Leave Pay

For a post DROP participant the Fund shall credit to such participant's DROP account the amount of unused leave pay otherwise payable to the member and received as a contribution to the Fund from the City

4.00 **Procedures for Refund of Contributions** - (Reference to Section 8 of the Statute)

4.01 Upon proper completion of an application, a refund of a member's contributions will be issued and noted before the Pension Benefits Committee.

4.02 All members who have served in the fire department for a period of less than ten (10) years and who terminate their employment may receive a refund of their contributions without interest. If a refund pursuant to this Section 4.02, or any other distribution, is an "eligible rollover distribution" under Section 402(c)(4) of the Code and is in an amount that is more than \$1,000 and does not exceed \$5,000, and the member or survivor neither elects to have such refund transferred directly to an eligible retirement plan within the meaning of Section 14.02(B) of the Pension Benefit Policy nor to receive such distribution directly, then such amount shall be transferred to an individual retirement plan of a trustee or issuer selected by the Pension Benefits Committee and the member or survivor shall be notified in writing (either separately or as part of the notice under Section 402

(f) of the Internal Revenue Code) that the distribution may be transferred to another individual retirement account.

4.03 Refunds shall be noted in the minutes of the next regular Pension Benefits Committee meeting, following disbursement.

5.00 **Disability Definitions/Procedures** - (Reference to Section 6 of the Statute)

A. For disability benefits requested by firefighters: Members shall not be eligible for disability benefits until the documents below have been provided to the Fund. Such documents shall include, but are not limited to:

1. Fitness for duty determination, Final order of the Commission from Civil Service Commission;
2. Fitness for duty determination letter from Fire Chief to City HR Director;
3. Any additional documents as required by the Fund.

B. Under no circumstances will the member be scheduled for the Fund physician's evaluation until HFRRF receives the documents specified above.

C. Fraud: The Board may take action to reduce or discontinue the disability benefit of a member who fraudulently applies for or fraudulently receives a disability benefit.

The member shall be responsible for obtaining an examination by the physician(s) treating the member for the condition(s) relevant to completing a submitted disability application. In such examination(s), the treating physician(s) shall examine the member for purposes of rendering a medical opinion based on consideration of the specific medical questions relative to the terms of the Statute, Sections 6(b), 6(c) or 6(e) for qualification purposes.

The Fund physician(s) shall also examine the member for purposes of rendering a medical opinion based on consideration of the specific medical questions relative to the terms of the Statute, Sections 6(b), 6(c), or 6(e) for qualification purposes. The Fund physician(s) and the member's treating physician(s) shall be provided with a copy of Section 6 of the statute, which copy shall highlight the various subsections of Section 6 under which disability retirement benefits may be granted. The Fund physician(s) and the member's treating physician(s) shall also be provided with a copy of the disability policies and procedures relevant to a submitted application. In the case of an application for benefits under sections 6(b) or 6(e) of the Statute, the physicians shall be provided with a copy of the job description for the applicant's current classification or the current position in which (s)he is serving.

If the member is incapable of being examined by the treating physician(s) for purposes of rendering a medical opinion based on consideration of the specific medical questions relative to the terms of the Statute, as described above, or if the treating physician(s) declines to render or is incapable of rendering such opinions, then the member may request that the application proceed on the basis of the examination and opinion of the Fund physician(s), any opinion of the treating physician(s) and any required, supplied, or adduced medical information. The Fund may also require the member to be examined by other physicians selected by the Fund, when deemed advisable by the Fund, for the purpose of establishing a further opinion when a treating physician's opinion is lacking.

An on-duty disability can be either an "occupational" or "general" disability. Off-duty disability benefits are based only on a determination of "occupational" disability.

- (1) "Occupational" on-duty disability and off-duty disability are provided for in Sections 6(b) and 6(e) of the Statute, respectively. The Fund physician(s) and the member's treating physician(s) shall base his/her opinions of whether or not the applicant is disabled and entitled to benefits under Section 6(b) or Section 6(e) on whether or not the applicant is capable of performing the usual and customary duties of the applicant's classification or position as a firefighter. "Occupational" disability under this provision exists only if such disability is likely to be permanent and is not the direct and proximate result of a pre-existing condition.
- (2) "General" on-duty disability is provided for in Section 6(c) of the Statute.
 - (a) "General" disability under this provision exists only if such disability is likely to be permanent and is not the direct and proximate result of a preexisting condition.
 - (b) The Fund physician(s) and the member's treating physician(s) shall base his/her opinion of whether or not the applicant is disabled and entitled to benefits under Section 6(c) on whether or not the applicant is capable of performing any substantial gainful activity. An applicant is incapable of any substantial gainful activity if (s)he is unable to perform all substantial and material acts necessary to the prosecution of some gainful business or occupation. Gainful business or occupation shall be interpreted as *any* remunerative occupation, and the following must be observed in all instances:
 - (i) Remunerative occupations are not restricted to manual labor occupations, with manual labor understood as work performed chiefly through muscular exertion, with or without tools or machinery;
 - (ii) The applicant must be considered unable to earn wages on a full-time (40 or more hours per week) basis;
 - (iii) Unless prevented by the disability, the applicant must ordinarily be considered able to learn some common and widespread skills used in employment positions;
 - (iv) The applicant's inability to continue to perform fire suppression or emergency medical technician duties shall not be considered relevant; and
 - (v) The permanency of a disability includes not only the irreversibility of an injury or illness through the rest of the applicant's lifetime, but also the prognosis for future management of its effects on the applicant's capabilities as well as the permanency of current treatment(s) of the disability (e.g. – particular pain medications or current movement restrictions) or similar treatments that at the time of examination are contributing to rendering the applicant incapable of performing substantial gainful activity.
 - (c) The applicant must apply for the general on-duty disability within thirty months of a treating physician's diagnosis of an injury or illness which is the basis for the application, unless the injury or illness is medically determined to have clearly worsened or the applicant has received a more serious diagnosis of the injury or illness during such thirty months. If a subsequent examination in the applicant's medical history reveals a

worsened condition as compared to the immediately preceding examination, then that subsequent examination shall constitute the relevant point of diagnosis for purposes of fulfilling the thirty months' requirement. In order to assist the Fund with fulfillment of this provision, the date of application shall be provided to the Fund's physician(s).

- (3) Once the Committee has ruled on an initial application and granted an "occupational" disability (under Section 6(b)), unless such ruling is appealed in the manner and within the time frame provided in these procedures and the Statute, no upgrade to "general" disability (under Section 6(c)) may be granted. Similarly, no upgrade from an off-duty to an on-duty disability of any type may be granted unless such ruling is appealed in the manner and within the time frame provided in these procedures and the Statute.
- D. For survivor benefits requested by disabled survivors of members:
The examining physician shall be supplied with a copy of Section 7 of the Statute, and a copy of the following definition, which clarifies the standard to be utilized in rendering an opinion whether an individual applicant is totally disabled. An applicant shall be totally disabled if, as a result of a physical or mental illness, injury or retardation, the individual is unable to perform all substantial and material acts necessary to the prosecution of some gainful business or occupation. Gainful business or occupation is defined as being capable of earning wages on a full-time (40 or more hours per week) basis.
- E. On-duty disability benefits due to heart or lung disease or cancer for active firefighters (with at least six years of service before becoming disabled) are provided for in Sec. 6 (d) of the statute.
- (1) Members who apply for disability benefits (or survivors who apply for death benefits) under this section must apply for benefits in accordance with sections 5.01 through 5.18 of the Pension Benefits Policy. The examining physician must render an opinion on whether there is clear and convincing evidence establishing that the presumption of on-duty disability is rebutted. If the examining physician renders an opinion that clear and convincing evidence demonstrates that the heart or lung disease or cancer was not related to the member's duties as a firefighter, the member may not be eligible for disability benefits under this section. Without such an opinion of clear and convincing evidence, the member may be eligible for this benefit based on the on-duty presumption. If the member is thus eligible, the examining physician must also render an opinion on whether the disability should be considered "occupational" or "general", as set forth in section "5.00 A." of the Pension Benefits Policy.

The Pension Benefits Committee shall review the report and opinion(s) of the examining physician for compliance with the standards of this policy. If there is clear and convincing evidence that the disability was not duty related, then the Committee shall determine that the on-duty presumption is rebutted. If there is an absence of clear and convincing evidence that the disability was not duty related, then the Committee shall determine that the on-duty presumption is not rebutted.

- (2) With respect to a member who was awarded disability benefits due to heart or lung disease or cancer prior to November 1, 1999 and whose determination was thus not subject to a rebuttable presumption concerning the work relatedness of a disability, the Pension Benefits Committee is authorized to conduct a review of a member's records relating to such disability. The Pension Benefits Committee shall, based upon the review of the records, make a determination of whether or not there is clear and convincing evidence that the disability was not work related. In any case in which the Pension Benefits Committee

finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be adduced and accepted, as necessary or desirable, in order to help make the determination.

The Committee may employ a physician, as it determines is needed, to help it evaluate the member's records and any evidence considered.

F. For pre-May 1993 Disability Determinations under former section 6(a), below:

- (1) The Pension Benefits Committee, on behalf of the Board, shall review, on a case-by-case basis, existing benefit payments to members (and survivors of deceased members) who retired with at least 20 Years of Service under the provision of the statute in effect prior to May 1, 1993:

“6(a) Whenever a member becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled for any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the member is not capable of performing the usual and customary duties of his classification or position, retire the member on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his participation, or so much thereof as he may have served.”

- (2) The review under this Policy and Procedures Section is to determine whether the member's disability was an “on duty” disability meeting the requirements of Section 6(b) of Texas Revised Civil Statutes Article 6243e.2(1), as ruled upon favorably by the Internal Revenue Service in its January 23, 2001 Ruling. Any determination that a member's disability was an “on-duty” disability as described above will: (1) apply only on a prospective basis beginning with the date of such determination; and (2) will not result in any additional benefits becoming payable to the member.
- (3) The determination by the Pension Benefits Committee under this Policy and Procedures Section is to be made 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 in any case in which the Committee finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be adduced and accepted in order to help make the determination.
- (4) The Pension Benefits Committee may employ a physician or other persons with relevant expertise, as it determines is needed, to help it evaluate the member's records and any evidence in making a determination under this Section.

- 5.01 Each person who makes an application for a disability pension or survivor benefit as an individual qualifying due to disability (hereinafter collectively referred to as "disability benefits") shall be provided with a copy of the current procedures applicable to Disability Benefits, a copy of the applicable checklist for disability pension applicants, and the applicable checklist for physicians submitting reports to the Chair of the Pension Benefits Committee. In addition, a member participating in DROP shall be provided with a current copy of the DROP policy and shall comply with the terms of 3.08 of such Policy.

- 5.02 Members must apply for disability pensions at the Fund's office. The process may require sixty (60) or more days from time of application to action of the Pension Benefits Committee.
- 5.03 Applicants for disability benefits are required to provide to the Fund all doctors' reports that they have pertaining to their disability. The Fund may require that applicants are also required to provide all other information and forms in their personnel file that pertain to the on-duty injury.
- 5.04 (a) Applicants will be required to sign a statement and certificate of disability specific to the type of disability claimed. Furthermore, all applicants, and those disabled retirees and disabled survivors under current review (sometimes hereinafter referred to as "recipients") shall be required to sign a standard form that authorizes the release to the Board of medical and insurance records from any source and a release to discuss medical and insurance records in a public forum. Section 6(c) disabled retirees and disabled survivor beneficiaries who are presently eligible for survivor benefits because of their status as disabled individuals shall file with the Board, by no later than the 30th of April of each year, an annual employment activities and earnings report covering the preceding calendar year. Such report shall be filed on a form approved by the Board and made available to disability retirees and disabled beneficiaries for such purpose. (Reference to Section 9 of the Statute). The form should accompany the disabled retiree's or beneficiary's prior calendar year's federal tax return. Upon review of the submitted documents, if it is determined by the Board or Committee that the individual was employed on a full-time (40 or more hours per week) basis, or on a part-time basis, earning more in total wages during a tax year than 150% of the latest federal minimum wage for that year multiplied by a 40 hour week and a 52 week year, the individual would be sent to the Fund's physician to be re-determined as set forth in Section 5.03 of this policy.
- (b) Individuals on "general" disability or receiving benefits as a disabled survivor, must notify the Board in writing within 20 days following the date on which (s)he is capable of substantial gainful activity. A disabled individual's employment in substantial gainful activity is conclusive evidence that the individual is no longer "disabled" as defined in Section 5.00A(2) or 5.00B of these procedures.
- (Individuals on "occupational" disability (on-duty or off) must notify the Board in writing within 20 days following the date on which they are no longer "disabled" as defined in 5.00A(1) of these procedures.)
- (c) The Fund staff may inquire, investigate, or conduct research as to the work status and work activities of any member receiving a disability retirement, without prior consent of, or notice to the member, including, as appropriate in the sole discretion of the Fund, retaining a professional investigator for the purpose of such inquiry, investigation, or research.
- (d) By December 31st of each calendar year the Fund shall randomly select five (5) disability benefit recipients under the age of 65 for re-evaluation of such benefit to the extent allowed under the Statute. Such randomly chosen disability benefit recipients shall not include (i) any recipient who had originally been awarded a disability benefit within the preceding two calendar years, or (ii) any recipient who had been chosen for re-evaluation within the preceding two calendar years. Notwithstanding the foregoing, nothing in this policy shall deprive the Board of its authority under section 9 of the Statute to require a disability benefit recipient to undergo a reexamination at any time.
- 5.05 In the event a "general" disability retiree is gainfully employed, such retiree shall be obligated to refund to the Fund the difference between benefits received under a "general" disability and benefits to which (s)he was actually entitled (if any) under the Statute, from the date of such employment.

Likewise, a beneficiary who is eligible for survivor benefits by virtue of his/her disability and who is gainfully employed, shall be obligated to refund to the Fund, all survivor benefits received from the date of such employment. (Reference to Section 9 of the Statute)

- 5.06 Applicants and benefit recipients under review will be sent, at the Fund's expense, for examination by the Board's physician.
- 5.07 Notwithstanding any statement or inference to the contrary in the Policy, Section 5, the Board's physician's report and opinion and all information that has been submitted will be considered by the Pension Benefits Committee along with staff recommendations(s) regarding the nature and the extent of the disability and the need for follow-up re-examination(s).
- 5.08 The Board of Trustees shall employ an advisory physician who will perform a medical examination, unless the Pension Benefits Committee determines the applicant is incapable of attending such examination, and act to review all medical information, including any reports of an examining physician and the Board's physician, regarding disability pension applicants and recipients under review whose examining physician's report conflicts with the Board's physician's report. The advisory physician will be selected jointly by the Board of Trustees' physician and the applicant's (recipient's) physician. The advisory physician will be instructed to provide the Pension Benefits Committee a definitive written recommendation as to whether it is his/her professional opinion that the doctor's reports suggest the applicant (recipient) is occupationally disabled, generally disabled, or not disabled as those terms are used in these procedures. (Reference to Section 3(b) (5) of the Statute).
- 5.09 Based on the Board's physician and/or the advisory physician's judgment, recommendations of staff and all relevant information contained in the applicant's (or recipient's) file including, but not limited to, the medical entrance examination and any medical history, and if applicable, the applicant's (recipient's) annual employment activities and earnings report, the Pension Benefits Committee is delegated the authority by the Board of Trustees to determine and act upon whether the applicant or recipient is disabled under the applicable sections of these procedures and the Statute. A member who has applied for disability benefits shall not be eligible for such benefits if the member has not completed the process for disability applicants 180 days from the later of:
- (a) December 13, 2016; or
 - (b) the date of the Final Order from the Civil Service Commission separating the member from active duty.

The 180 days may be extended by the Pension Benefits Committee for intervals of 90 days if the Pension Benefits Committee determines that the extension is warranted because extenuating circumstances apply. A member who is ineligible for disability benefits as described in this subsection shall automatically be granted, if eligible, a service retirement, subject to any proper and timely appeals allowed, and so long as all other requirements of the Statute, relevant policies, and forms for such retirement have been met.

- 5.10 If the Pension Benefits Committee acts so as to deny the application for disability benefits, grant a lesser benefit, or reduce or eliminate a previously awarded disability benefit, the applicant, disability retiree, or disabled beneficiary (whichever is applicable) shall be so notified by certified mail, and shall have ten (10) calendar days from the date of receipt to request, in writing, an appeal before the Board of Trustees.

- 5.11 At any time after a determination by the Pension Benefits Committee, but prior to a determination by the Board on an appeal to the Board, an applicant may re-apply and submit additional information which was not previously presented to the Pension Benefits Committee for consideration. A noticed appeal to the Board may be abated for the purpose of permitting a re-application with additional information. If an applicant re-applies, but additional information is not provided to the Committee, the Pension Benefits Committee will affirm its prior determination. If additional information is submitted to the Committee, it shall consider this and all prior information. Upon any appeal to the Board, however the Board shall consider only such information as was provided to the Committee.
- 5.12 Written documentation of any such appeal shall be kept of all relative discussion and action, exclusive of appropriate Executive Session.
- 5.13 The Board may affirm, reverse, or amend the subject action of the Pension Benefits Committee.
- 5.14 In the event the Board upholds the denial of an application for disability, grants a lesser benefit, or reduces or eliminates a previously granted disability benefit, the applicant, disabled retiree or disabled beneficiary, whichever is applicable, may appeal the Board's decision in the district court. All denied applicants and recipients whose disability benefits have been reduced or eliminated will be sent a letter that provides the procedures for appeal.
- 5.15 In cases where a disability benefit is granted subject to a re-examination at a future time, staff will routinely schedule the follow-up exam with the Fund physician as required and report findings and recommendations to the Pension Benefits Committee for review and action.
- 5.16 Staff will provide to the Pension Benefits Committee, no less than annually, a listing of all disability benefit recipients (or survivors) with a notation indicating re-examinations required by motion of the Board and with recommendations, if any, regarding the need and rationale for any other re-examinations that may be appropriate.
- 5.17 Signed physician(s') reports regarding disability pension applicants and individuals currently receiving disability benefits are to be submitted to the Director of Benefits for approval by the Pension Benefits Committee and/or the Board.
- 5.18 The Board's physician's reports will be available upon request to the applicant, the disability retiree, or disabled beneficiary, whichever is applicable.
- 5.19 Members approved for disability retirement will receive a \$5,000 lump sum benefit payment as either a cash distribution, less applicable taxes, or as a tax deferred rollover to another qualified plan.
- 6.00 Procedures for Death and Survivor Benefits, excluding DROP death benefits, governed by Section 3.07 of this Policy** (Reference to Section 7 of the Statute).
- 6.01 Survivor(s) eligible for payment under this section must request and apply for such payment by completing forms required by and available through the Fund in addition to providing the marriage and/or birth certificate(s) necessary to verify eligibility. No death benefit will be processed for payment without a death certificate or a Pending Death Certificate certifying the death of the member. In instances where payment is made through a trustee or to an estate, verifiable proof of trusteeship or status as appropriate representatives must also be provided or be on file.

- 6.02 A member may designate a trustee for his/her benefits by signing, before a notary, a "Testamentary Trustee" form provided by the Board. A trustee may be appointed in order to insure that the firefighters' benefits will be distributed to his/her dependent children or parents as (s)he intended.
- 6.03 If a member dies while there is no eligible beneficiary as enumerated in Section 11 of the Statute, and there is no designated beneficiary for the refund of contributions, the estate may file an application with the Board for any monies due.
- 6.04 Members entitled to a refund of contributions in accordance with statute may designate a beneficiary to receive, upon his/her death, the total contribution (s)he has made into the Fund by signing, before a notary, a "Designated Beneficiary" form approved by the Board. This Form is to be used only if there is no eligible beneficiary as enumerated in Section 7 of the Statute.
- 6.05 A member's parent may in some cases be an eligible survivor under Section 7 of the Statute, but only if the parent was dependent on the member immediately prior to the member's death. An applicant will be considered a dependent parent only if the applicant submits proof, satisfactory to the Board of Trustees, that:
- A. the applicant is the father or mother of the member for purposes of the intestacy laws of the State of Texas, except that a father or mother by adoption must have legally adopted the member prior to the member's 18th birthday, and
 - B. in the year immediately preceding the member's death, the member had claimed the applicant as a dependent on his/her federal income tax return. In the event the member did not make such claim, verification that at the time of the member's death, the member was providing at least one-half of the applicant's actual support beginning any time during the same tax year of the member's death may also be deemed sufficient proof of dependency. Support shall include, but not be limited to, the fair rental value of the applicant's dwelling (including utilities), the cost of clothing, food, medical and dental care, transportation, entertainment, and recreation. (Reference to Section 7 of the Statute)
- 6.06 Either partner in an informal marriage will be considered a spouse only in accordance with Texas Family Code, Sections 2.401 – 2.405. Proof of marriage, however, must be in the form of: (1) a declaration of marriage form that may be obtained through the clerk of court and signed as provided for in the Texas Family Code, or (2) a clear, final and non-appealable judicial declaration, issued by a Texas district court, that an informal marriage existed under Texas Family Code, Sections 2.401 – 2.405 at the time of death. The declaration of marriage form should be pre-filed (before the death of a Fund member) by the member with the Fund and any changes shall be reported to the Fund.
- 6.07 For purposes of meeting the requirement of enrollment in an accredited college or university per Section 1 (8) of the Statute concerning "eligible child", such requirement need not be met at the time of the member's death. A child of a member by birth or adoption, who ceased to meet all the enrollment requirements and thereby became ineligible, may become eligible again as long as all the criteria (under 23, unmarried, enrolled full time in accredited college or university) are re-established.
- 6.08 If a retiree or a retiree's eligible survivor dies with no eligible survivor of the retiree remaining, the monthly pension benefit that would have been distributed to the deceased retiree or eligible survivor had such retiree or eligible survivor lived shall be prorated according to the number of days of the month during which the deceased retiree or eligible survivor was alive divided by the number of

days in the month of death. The prorated amount shall be payable to the retiree's or eligible survivor's estate or to the retiree's or eligible survivor's court-approved small estate through its legal representative on application ("Application") by the estate or legal representative and distributions shall end with such pro-rated benefit distribution. No monies shall be payable under this section if the Application is not submitted to HFRRF within 180 days from the later of:

- (a) January 1st, 2018; or
- (b) the date the retiree or eligible survivor died.

Money payable under this subsection may not escheat to the state. This policy is effective as of July 1, 2009, the beginning of the current plan year, in which this policy was passed.

7.00 **Qualified Domestic Relations Order (QDRO) - Policies and Procedures**

Pursuant to Texas Government Code Ann. §804.002, the Board of Trustees of the Houston Firefighters' Relief and Retirement Fund has adopted Subchapters A and C of Chapter 804 of the Government Code, the "QDRO Statute." The Board is authorized pursuant to Texas Government Code Ann. §804.003(n) to promulgate the rules set forth herein for the purpose of implementing the QDRO Statute and to specify a procedure for determining whether or not a court order regarding distribution of a member's interest in the Houston Firefighters' Relief and Retirement Fund, is a "qualified domestic relations order." The Board of Trustees, as Plan Administrator, has designated the Director of Benefits as its Designee for purposes of receiving, reviewing, and ruling on whether a DRO is a QDRO, and for purposes of communicating such determination to the member or retiree and the alternate payees. The Designee may be changed at any time by resolution of the Board of Trustees.

Definitions:

- 7.01 A. Fund: The Houston Firefighters' Relief and Retirement Fund.
 - B. Domestic Relations Order or "DRO": is any judgment, decree, or order including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.
 - C. Alternate Payee: is a spouse, former spouse, child, or dependent of a member or retiree who is recognized by a DRO as having a right to receive all or a portion of the benefits payable by the Fund with respect to such member or retiree.
 - D. Qualified Domestic Relations Order or "QDRO": is any DRO approved by the Fund which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree of the Fund, which directs the Fund to disburse benefits to the alternate payee, and which meets the requirements of Sections 7.02, 7.03, and 7.06 below.
- 7.02 In determining whether a Domestic Relations Order satisfies the requirements of a Qualified Domestic Relations Order, a DRO must satisfy all requirements of this 7.02, and must not violate the restrictions of Section 7.03. To constitute a QDRO, a DRO must:

- A. clearly provide the name, social security number, and last known mailing address, if any, of the member or retiree and each alternate payee covered by the order;
- B. specify the amount or percentage of the member's or retiree's benefits to be paid by the Fund to each alternate payee, or the manner in which such amount or percentage is to be determined;
- C. specify the number of payments or period for which payment is required;
- D. clearly provide that it applies to the Houston Firefighters' Relief and Retirement Fund;
- E. not provide for a type or form of benefit or option not provided for by the Fund;
- F. not provide for payment of increased benefits (determined actuarially);
- G. not require payment of benefits to an alternate payee which are already designated to another alternate payee under a prior QDRO;
- H. not require payment of a benefit to an alternate payee, prior to the date the participant retires, receives a refund of contributions, or receives any other distribution required by law;
- I. be signed by a Judge or incorporated as part of the decree; and
- J. provide for proportional reduction in the amount awarded in the event of the member's retirement prior to twenty (20) years of service.

7.03 A DRO is not a QDRO if:

- A. it requires selection of a particular benefit payment or option;
- B. it does not clearly provide for each possible benefit distribution from the Fund (service retirement, disability retirement, refund of contributions, and DROP Account distribution);
- C. it requires the Fund to act contrary to its governing statute, policies, and procedures;
- D. it eliminates, adds, or modifies conditions of eligibility for benefits from the Fund;
- E. it attempts to award any future benefit increases provided or required by the legislature;
- F. it does not provide for proportional reduction of the award in the event benefits available to members are reduced by law.
- G. it attempts to designate or treat the former spouse (or some other ineligible alternate payee) as an eligible survivor for purposes of entitlement to survivor benefits pursuant to Section 7 or 5(l) of the Statute.

7.04 The Fund Staff will provide a Form QDRO to each and every member or retiree who requests information on the disposition of retirement benefits in the event of divorce. The Fund Summary Plan Description will include information about QDROs and the availability of a Form QDRO. The Form is provided as a convenience to members, but members or alternate payees may submit for ruling, any DRO which meets the requirements of Sections 7.01, 7.02, and 7.03.

Procedures to Follow Upon Receipt of a Domestic Relations Order:

- 7.05A. Upon receipt of a certified copy of a DRO, the Designee will promptly notify the member or retiree and each alternate payee of its receipt of the DRO and will provide a copy of the Fund's procedures for determining whether the DRO is a QDRO.
- B. During any period in which the status of a DRO is being determined by the Designee, the Board, or a court of competent jurisdiction, the Designee shall direct that any benefits currently in pay status, and which are in dispute, be held in suspense pending resolution.
 - C. The Designee will review the DRO and complete the appropriate form to determine whether it is a QDRO. The Designee shall complete this review and rule on the qualification of the DRO within 90 days of receipt of such DRO. Notice of the Designee's ruling with respect to the status of the DRO shall be provided in writing to the member and each identified alternate payee, within 90 days following initial receipt of the DRO. Thereafter, the Designee shall compute and disburse the escrow funds, if any, and any current benefits to the person(s) entitled to such funds, unless the decision with respect to the status of the DRO is appealed in writing to the Board of Trustees by the aggrieved member or alternate payee within 45 days following receipt of the notice of ruling by the party filing the appeal.
 - D. If a participant is a retired member of the Fund and the DRO is determined not to be a QDRO, or if 18 months have expired since the Designee's receipt of the DRO, and the issue of the DRO's status as a QDRO is not resolved, then the Fund shall pay the suspended amounts without interest to the individual who would have been eligible to receive such benefits if there had been no order. A determination that such DRO is a QDRO, after the close of the 18 month period shall be applied prospectively only. If a participant is an active member of the Fund and the issue of the DRO's status as a QDRO is not resolved within 18 months, no determination will be issued on the status of that particular DRO and that submission will no longer be reviewable. A review of a subsequently submitted DRO, even if identical to the DRO previously submitted or containing changes prescribed by the Designee as to the DRO previously submitted, would be needed at a later date if the parties are re-seeking the qualification of a DRO.
 - E. An alternate payee may designate a representative to receive copies of notices sent to him/her with respect to a DRO. Any designation of a representative must be in writing and sent to the Board or the Designee.
 - F. For notice purposes, any notice shall be deemed received on the postmark date if sent properly addressed by registered or certified mail.
 - G. Alternate Payees will be treated as beneficiaries for notice and reporting requirements, which includes distribution of Summary Plan Descriptions and Summary Annual Reports.
 - H. The amounts distributed directly to Alternate Payees shall be reported accordingly by the Fund on Forms 1099-R, or such other form as may be designated by the Internal Revenue Service, from time to time.
 - I. A proposed DRO may be submitted in order to obtain advance guidance as to whether the proposed DRO will meet the QDRO requirements of the Fund. The review criteria, fees, and the timing for review shall all be as set forth for review of an actual DRO. Provided however, that if a proposed DRO is submitted for review and ruling, any ruling on the proposed DRO

shall be conditional. The DRO will not be a QDRO until (1) the Board (or Designee) receives a certified copy of the DRO accompanied by (2) a sworn statement from the submitting party that the DRO is identical to the proposed DRO for which conditional approval was previously given; and (3) the Designee issues a letter ruling on the QDRO status of such DRO. The member and all alternate payees shall receive a copy of such final ruling. A second review fee shall not be charged for issuance of a final letter, so long as the DRO is submitted for ruling within 180 days of the Designee's issuance of a conditional approval letter and the DRO is in fact identical to the conditionally approved DRO.

Responsibility to Cover Administrative Costs of Review and Payment

7.06 The administrative fee for reviewing a proposed QDRO submitted for ruling under 7.05 above shall be nonrefundable and paid in advance by the member or alternate payee who submits the DRO for review and ruling. Payment of such administrative costs does not in any manner guarantee a favorable ruling.

- A. The administrative fee for review and ruling shall be \$25 if the DRO essentially mirrors the Fund's Form QDRO provided in accordance with 7.04, and the Designee is not required by the submitting party, to review and rule on the qualified status of the DRO within a time period other than that permitted by Section 7.05 of these procedures.
- B. If the DRO essentially mirrors the Fund's Form QDRO, but the Designee is requested to review and rule on the QDRO in an expeditious manner, and the Designee does review and rule within such shorter time period, then the administrative cost for such review shall be \$50.
- C. If the DRO does not mirror the Fund's Form QDRO then the administrative cost for such review shall be \$100 with an additional fee of \$50 payable in the event that an expeditious review is requested.
- D. A fee of \$5 shall be deducted from each monthly benefit payment made to an alternate payee. This \$5 fee shall not apply to child support payments to alternate payees.
- E. The fees set forth above may be modified from time to time to reflect the administrative costs of reviewing the DROs and for making benefit payments to alternate payees.
- F. The Fund waives the administrative fee for review of a DRO if such DRO relates solely to child support obligations and such DRO is:
 - (1) submitted for review or qualification by an agency, department or commission of the State of Texas, including the Office of the Texas Attorney General, or a local Texas governmental office, including the office of a Texas district or county attorney; and
 - (2) such agency, department or commission, or local governmental office, cites to the Fund its legal authority to submit a DRO for the Fund's review or qualification.

8.00 Policy Governing Re-entry into the Fund

General Re-Entry Provisions

8.01 Each firefighter shall receive a copy of Section 8.00 and shall sign an acknowledgment as to the effect of such rules, all as a condition of such firefighter's re-entry into the Fund.

- 8.02 A candidate for re-entry into the Fund under Section 8.03 must successfully complete a thorough medical examination as a condition of the applicant's re-entry into the Fund, and must meet the medical requirements otherwise applicable for initial eligibility. A candidate for re-entry into the Fund under Section 8.03 or 8.04 is considered to have fulfilled any age qualification for re-entry, provided that the candidate had previously entered the Fund before the age of 36 in accordance with Section 13(a) of the Fund's statute

Re-Entry After Refund

- 8.03 **With Repayment:** If a firefighter wishes to re-enter the Fund after receiving a refund, and wishes to repay his or her refunded contributions, the Board requires the repayment of the member's total refunded contribution, plus interest, prior to such re-entry into the Fund. The interest shall be the actuarially assumed rate for return on investment plus two (2) percent and shall be compounded annually until the amount of repayment is remitted in full. A candidate for re-entry to the Fund wishing to repay his or her previously refunded contributions shall have one-hundred and twenty (120) calendar days to repay the aforementioned refund of contributions from the date of application for re-entry into the Fund. If the firefighter repays the refunded contributions with interest as provided above, then for purposes of computing the firefighter's benefits or benefits payable to such firefighter's beneficiaries as provided under the Statute, participation in the Fund shall include the years of service accrued prior to the date of refund of contributions, but will not include the period of time during which the firefighter was not a participant in the Fund. For purposes of this policy section re-hire into the Houston Fire Department and receipt of appropriate employer and employee contributions by the Fund shall be deemed an application to re-enter the Fund and shall start the one-hundred and twenty (120) calendar day period.
- 8.04 **Without Repayment:** If a firefighter wishes to re-enter the Fund after having received a refund of contributions, and that firefighter will not be repaying such refunded contributions as provided for in Section 8.03 above, such firefighter may nevertheless re-enter the Fund. Such firefighter, seeking to re-enter the Fund without repayment must satisfy all the eligibility requirements provided for in Section 13 of the Statute, at the time of proposed re-entry, subject to all the clarifications, restrictions and limitations set forth in in Sections 8.01 and 8.02, above, including any clarification related to age requirements. For purposes of computing such firefighter's benefit as provided under the Statute, participation in the Fund for all purposes shall be counted from the re-entry date, and all participation in the Fund accruing prior to that re-entry date, for which the firefighter previously received a refund of contributions, shall be disregarded. For purposes of this policy section re-hire into the Houston Fire Department and receipt of employee and employee contributions by the Fund shall be deemed an election by the re-hired firefighter to re-enter the Fund.

READMISSION TO THE FIRE DEPARTMENT PURSUANT TO COURT ORDER:

Re-Entry Following Commencement of Pension Payments Without DROP Participation

- 8.05 If a firefighter is reinstated or re-employed in classified service with the Fire Department following such firefighter's retirement and commencement of monthly pension payments and such firefighter has never elected to participate in the DROP, then all monthly pension payments to or on account of such firefighter shall be suspended, regardless of whether or not the firefighter is reinstated as an active member of the Fund. Furthermore, such firefighter shall have no right or interest in the amounts so suspended.

- 8.06 If a firefighter is re-employed in classified service with the Fire Department, pursuant to a Court Order, mandating re-employment by the City of Houston, such firefighter may be readmitted to the Fund, subject to the conditions and requirements set forth in Sections 8.01, and 8.05 of this policy and in accordance with rules set forth below. If the firefighter is readmitted to the Fund, then such firefighter's service benefits or benefits payable to such firefighter's beneficiaries shall be computed as follows:
- A. All pre-retirement service shall be included in computing the monthly pension benefit to which the firefighter will be entitled at the time of his/her subsequent retirement, only as set forth below.
 - B. The firefighter's final monthly pension benefit (or the survivors benefit) payable upon retirement (or death), shall be computed in two pieces, which when added together shall constitute the firefighter's monthly pension benefit at the time (s)he again retires. The first benefit piece shall be computed by applying the pre-retirement service credits to the benefit formula in effect on the firefighter's initial date of retirement. The second benefit piece shall be computed by applying the service credits earned following reinstatement to the benefit formula in effect on the firefighter's subsequent retirement date. Provided, however, that both pre-retirement and post reinstatement compensation may be considered in determining the "average monthly salary".

Re-Entry Following Commencement of Pension Payments with DROP Participation

- 8.08 If a firefighter is re-employed in classified service with the Fire Department pursuant to court order mandating re-employment following such firefighter's participation in DROP and retirement and commencement of monthly pension payments, then such firefighter's re-entry shall be strictly limited by the conditions of DROP, specifically Section 3.05C of this Policy.

RE-ADMISSION TO THE FIRE DEPARTMENT AFTER SERVICE RETIREMENT:

- 8.09 If a firefighter retired with a service or deferred pension benefit is re-employed in classified service with the Fire Department following retirement and commencement of monthly pension payments, whether such firefighter ever participated in DROP, and such re-employment is not made pursuant to a court order mandating re-employment, such firefighter shall not be reinstated as an active member of the Fund. Such firefighter shall not accrue additional service, average monthly compensation shall not be recomputed, and the applicable benefit formula shall be that formula in effect at the time that the firefighter initially terminated active membership in the Fund and active service with the Fire Department, or the DROP effective date, whichever is applicable. All monthly pension payments to or because such firefighter shall be suspended effective as of the date of re-employment, and such firefighter shall have no right or interest in the amounts so suspended. Monthly pension payments, or as applicable, survivor benefits shall recommence, when such firefighter again terminates classified service with the Fire Department.

REINSTATEMENT FROM A DISABILITY RETIREMENT:

- 8.10 If a firefighter who is receiving an on-duty or off-duty disability from the Fund obtains reemployment with the Fire Department, in order for the firefighter to be reinstated as an active Fund member it will be necessary for the Fund to determine and validate that the original incapacitating disability no longer exists and that the firefighter is able to return to full, active, and unrestricted duty. Reinstatement to Fund active membership shall result in the discontinuation of

the benefit being received. When such a reinstatement is being sought, the reinstatement shall only occur after five conditions are met:

First, the Fund must receive written notification from the Fire Department that a reemployment effort is in progress and that a Fire Department physical examination has been passed.

Second, the candidate must provide the Fund with a release from his/her personal physician stating that the applicant is able to return to work and is able to return to active duty without restriction.

Third, the candidate must sign an acknowledgement that a finding of a disability no longer being present shall result in the discontinuation of the benefit being received.

Fourth, the candidate must undergo an examination by the Fund's physician to determine whether the original incapacitating disability still exists.

Fifth, the Fund's physician will submit a report to the Pension Benefits Committee stating whether the original disability still exists and whether the firefighter has the capacity to return to work and to full, active, and unrestricted duty.

Based on the above, the Pension Benefits Committee will determine eligibility for reinstatement to the Fund.

- A. The Pension Benefits Committee will review the findings of the Fund physician's report, and all other relevant information, and shall act to continue or discontinue the disability benefit. Notification of that action will be forwarded to the Fire Department.
- B. If the Pension Benefits Committee acts so as to discontinue a benefit, it will be discontinued effective immediately. A firefighter whose benefit is so discontinued will not be re-admitted into the Fund unless and until reinstated employment with the Fire Department is actually effected.
- C. Regardless of the action taken by the Pension Benefits Committee to continue or discontinue a benefit, the candidate for reinstatement will be notified of the action by certified mail, and shall have ten (10) calendar days from the date of receipt to request, in writing, an appeal hearing before the Board of Trustees as called for in Section IV 5.10 of these procedures.

9.00 Cost of Living Adjustments (COLA) and Supplemental Payments - (Reference to Sections 11 and 10A of the Statute)

9.01 Eligible benefit payments shall be increased in October of each year in accordance with Section 11 of the Statute.

9.02 Supplemental payments to retirees or survivors pursuant to Section 10A of the Statute shall be distributed each January. The aggregate amount of \$5 million will be distributed to all eligible retirees and survivors. The amount of any such supplemental payment will be determined according to the factors and method as set forth in Section 10A of the Statute. Staff will provide the Fund's custodian bank the data necessary to process the supplemental payments as soon as practicable.

10.00 **When Checks are Processed**

- 10.01 Pensioner and beneficiary checks will be mailed three (3) business days prior to the end of the month. Monthly pension benefits credited to a member's DROP Account shall be credited as of the first of the following month.
- 10.02 Refunds of contributions will be issued approximately ten (10) days following the later of 1) the member's receipt of his/her final payroll check from The Houston Fire Department, or 2) completion of his/her application for a refund of contribution. (Reference to Section 8 of the Statute)
- 10.03 Members who are separating from the service of the Fire Department will have a "Refund of Contribution" check mailed only after the amount of contributions has been verified and the "Application for Refund" form has been properly completed. (Reference to Section 8 of the Statute)
- 10.04 "Retro/Special" checks will be issued for partial month payments or ad hoc payments as needed.

11.00 **Lost/Undelivered/Forged Checks**

- 11.01 The Fund will not take any action with respect to a lost check before the first day of the month.
- 11.02 If a member or beneficiary claims (s)he has lost a check or has not yet received his/her check, from the Fund, a stop payment order will be requested and a new check will be issued in accordance with the bank's procedures.
- 11.03 The Fund will notify the Custodian Bank of the lost check by telephone and request that a stop payment order be placed on the check. In such notification, the Fund will specify the name of the payee, the amount of the check, and the date of the check. The Fund will promptly confirm in writing the request for a stop payment order, which must be received by the Custodian Bank within fourteen (14) days of the initial phone call.
- 11.04 Unless the agreement with the Custodian Bank provides for a shorter or longer period of time to act, with respect to stop payment order, the Fund will wait two (2) full business days before sending a new check to the member or beneficiary or requesting the bank to send a new check to the member or the beneficiary. To insure that the member or beneficiary does not confuse the check on which payment has been stopped with the replacement check, the replacement check will be dated other than the last day of the month.
- 11.05 If the cause of the loss is not attributable to the Fund, its agents or the Custodian Bank, the Fund has the right to charge a member or beneficiary for any expense incurred by the Fund in causing a new check to be issued and stopping payment on the original check. The Fund's current policy is to not charge the participant a fee.
- 11.06 In the event that a claim is made against the Fund in respect to a check on which payment was stopped, the Fund will pursue an investigation of fraud. If the Fund determines it should honor the check on which payment was stopped, a new check will be issued in exchange for the old check, and the amount of such check will be withheld from future payments to the participant.
- 11.07 If a signature is forged on a member or beneficiary benefit check, the member or beneficiary will be required to sign an affidavit attesting to such forgery. The affidavit and the original check are to be returned to the Custodian Bank for assistance in returning the money to the Fund account.

12.00 **Address Changes**

- 12.01 Written requests for address changes and/or changes in insurance status for a pensioner or his/her beneficiary must be received by the Fund Office by the 10th of the month for the change to be effective that month.
- 12.02 Requests for address or insurance changes by benefit recipients must be submitted on an address change request form or an applicable insurance form.

13.00 **Deductions**

- 13.01 The Fund may deduct amounts from participants' regular monthly pension checks for any purpose required by law or deemed appropriate by the Board of Trustees, provided however, that the deduction purpose must be directly affiliated with the City of Houston, state or federal government, or HPPFA Local #341 and board approved exempt organization under 501(c) of the Internal Revenue Service Code.
- 13.02 The deduction purposes approved by the Board are as follows: federal income tax, City of Houston provided health, dental, vision, and life insurance, Local #341 sponsored supplemental life, dental, and vision insurance, Relative Assistance Fund, Hospital Fund, Houston Fire Museum membership dues and Dennis W. Holder Scholarship Fund. It is further recognized that the Fund is required by law to withhold Internal Revenue Service levies and child support through Qualified Domestic Relations Orders.

14.00 **Eligible Rollover Distributions**

- 14.01 Notwithstanding any other provision of the Fund, a distributee may elect, at any time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- 14.02 Definitions.

(A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; or any distribution to the extent such distribution is required under section 401(a)(9) of the Code. A portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution includable in gross income and the portion of such distribution that is not so includable.

(B) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (in either case, commonly referred to as an "IRA") an employer sponsored plan qualified under Section 401(A) of the Code, including a qualified 401(k) plan, profit-sharing plan,

defined bonus benefit pension plan, stock bonus plan, or money purchase plan, an employer-sponsored annuity plan under Section 403(a) of the Code, a tax-sheltered annuity of a charitable or state educational employer under Section 403(b) of the Code, and an eligible deferred compensation plan of a governmental employer under Section 457(b) of the Code.

(C) Distributee: A distributee includes a Firefighter or former Firefighter. In addition, the Firefighter's or former Firefighter's surviving spouse and the Firefighter's or former Firefighter's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A distributee following the death of the Firefighter or former Firefighter may also include a person who is not the Firefighter's or former Firefighter's surviving spouse or the Firefighter's or former Firefighter's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code (i.e., a "non-spouse beneficiary"), but in such a case the term "eligible retirement plan" includes only an individual retirement account that the distributee has established for the purpose of receiving the distribution and, if the distributee is a trust, the trust must satisfy the requirements established under Section 402(c)(11)(B) of the Code.

(D) Direct rollover: A direct rollover is a payment by the Fund to the eligible retirement plan specified by the distributee.

15.00 Plan and Limitation Years

15.01 The Fund's "Plan Year" is the 12 consecutive month period ending June 30. The Board may change the Fund's plan year by a written amendment to the plan, in accordance with applicable Treasury regulations.

15.02 The Fund's "Limitation Year" for purposes of Section 415 of the Internal Revenue Code shall be the calendar year. The Board may change the Fund's "limitation year" by written resolution, in accordance with applicable Treasury regulations.

16.00 Proportional Retirement Benefits

This program went into effect on December 1, 2001.

- A. "Combined service credit" means the combined sum of an eligible participant's service credit in each participating retirement system in which the participant has service credit and for which the total satisfies the 20 year requirement for a service retirement or under 20 years for a deferred retirement, disability retirement, or proportional retirement.
- B. "Eligible participant" means a person who is employed by the city and who 1) was eligible to receive a benefit from the Fund on his/her date of termination from the Fund; 2) has been covered by a participating retirement system under their respective statutory authority, 3) is or has been a member of the Fund; and 4) was still employed by the City on or after the effective date of the proportional retirement program (December 1, 2001)."
- C. "Participating retirement system," means a retirement system established by the Statute, Article 6243g, or 6243g-4 of Vernon's Texas Civil Statutes, or a successor statute to any of those laws.

- D. "Service credit" means the number of years that a person has participated in the Fund by making contributions required by this article.
- E. For the purposes of determining eligibility for service retirement benefits only, the combined service credit will apply. However, a person may not receive credit for service in a participating retirement system for the same period of time. Participation in the Deferred Retirement Option Plan (DROP) is limited to active firefighters with 20 years of service in the Houston Firefighters' Relief and Retirement Fund.
- F. For the purpose of determining a disability retirement for eligible participants under the proportional retirement program only, when disabled in a participating retirement system, a person is entitled to 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.
- G. For the proportional retirement program only, an eligible participant with service credit less than 10 years of participation, is entitled to 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.
- H. Participants retiring under the proportional retirement program are only eligible for the same benefit enhancements as a deferred retirement.
- I. The Fund will verify (upon request) credited pension service for any member who was once a member of the Fund and subsequently became a member of another participating retirement system.
- J. To apply for proportional retirement benefits, a person must contact the Fund to request an Application for Proportional Retirement Benefits. This form must be completed and returned to the Fund within 60 calendar days of the date that the individual is no longer an employee of the City of Houston.
- K. Benefits are not payable under this section until the individual is no longer an employee of the City of Houston.

17.00 **Military Leave Policy**

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

A member who is engaged in active duty in any of the military services of the United States will receive credited pension service for the period of the military service, provided he/she returns to employment with the Houston Fire Department ("HFD") with an honorable discharge within the period required by the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA"), and the period of military service does not exceed the period entitled to by that Act.

A member should notify the Fund in writing prior to leaving for military service.

Upon returning to active service with the HFD, a member requesting credit for military service must provide the Fund with documentation of the period of military service and proof of his/her honorable discharge.

The notional DROP account of a member on military leave under the terms of USERRA will be continued in accordance with Section 5 of the Statute.

If a member sustains an injury while on military leave under the terms of USERRA, pension benefits will be payable based on the off-duty disability benefit provisions as described in Section 6(e) of the Statute. In the event of a member's death while on military leave under the terms of USERRA, death benefits will be payable to eligible survivors based on the off-duty death benefits described in Section 7 of the Statute.

This section is intended to be in compliance with the provisions of USERRA.

18.00 General Provisions for Determination of Benefits

18.01 Staff correction of certain calculation errors

Confirmed and obvious administrative errors pertaining to calculation of a member's benefit, that results in underpayment to the member or members beneficiaries, may be corrected at any time within four years of the time the member or his legal successor could file a claim to correct the error. These corrections will be made by the Fund administration by distributing or crediting to the member, in any appropriate portions or intervals, the full amount the member would have received but for the error. Each such correction of an error is to be reported to the Pension Benefits Committee at the earliest possible time following the correction. (Procedures regarding overpayments to benefit recipients may be found in Section 11(o) of the Statute).

18.02 Submission of all applications to the committee

Staff shall process and submit all applications for retirement (including disability retirement pensions) to the Pension Benefits Committee within a reasonable amount of time, in the normal course of business. The Committee shall accordingly determine the application status, enabling any appeal to such determination that a member may exercise under these policies and the Statute.

18.03 Revocation of prior applications

A member's submission of any retirement application, including one for a disability retirement pension, revokes all applications previously submitted by the member.

18.04 Avoiding Trustee provisions of, or reliance on, individual advice

No Trustee of the Fund may give advice to, discuss with, or comment to individual Fund members on individual retirement situations, benefits, or eligibility. Any Trustee should instead refer members to Member Services. No member may rely on any comments, directions or advice of a Trustee regarding individual issues. This policy does not apply to board or committee deliberations which may require discussion with members regarding their applications.

18.05 Member elections available for pension effective dates

The election described and available under Section 11(f) of the Fund's statute: "to receive a benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter," is construed to mean that solely for purposes of calculating the initial pension distribution, the member (or eligible survivor) shall receive the same total amount of distribution as if the member had left active service beginning the day after the member ceased to carry out

his/her regular duties as a firefighter. This election must be no later than ten business days after the date that the Pension Benefits Committee approves or notes the member's retirement application. Under no circumstances are distributions made to a member while in active service.

An election "to receive a benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter," is not intended to and does not provide an earlier retirement or change employment status and shall not be construed to have such an effect. The availability of the election is limited to members (or eligible survivors) that apply for a disability benefit or that experience an involuntary suspension or separation from active service that becomes final, as the chief purpose of the election is to address the situations of those members (or eligible survivors) who experience a period of indeterminate final status due to injury or illness or involuntary suspension or separation awaiting final resolution. Members (or eligible survivors) to whom the election is not available shall receive an initial distribution based upon the effective date of the member's termination of active service.

For purposes of this Section of this policy, "pension effective date" shall mean either the day after the date the member ceases to carry out his/her regular duties as a firefighter or the day after the effective date of the member's termination of active service, but in the case of the former, is not the date of retirement.

In the event that a Deferred Retirement Option Plan (DROP) participant has made an election to base his/her pension effective date on the day after his/her performance of firefighter duties ceased, the DROP statement will be adjusted to only reflect interest after that pension effective date. If an individual makes this election, he/she cannot make a back-DROP election during the period between the date the individual ceased to perform the duties of a firefighter, and the date the individual left active service. Back-DROP elections can only be made before the individual's pension effective date.

A member (or eligible survivor) who has made an election to receive a benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter may request to make a one-time only change to this election, and elect the day after the date of the member's termination of active service to be the pension effective date. In order to request such change, that individual has within 30 calendar days after the date the member has made the initial election to deliver to the Fund in writing, a request to change the initial election. If the 30th calendar day falls on a Fund holiday or a weekend, the Fund will accept this one-time only change election on the next Fund business day. This election is not intended to and does not change employment status and shall not be construed to have such an effect.

If pension benefits have been paid in response to an election to make the benefit effective after the member ceased to carry out his/her regular duties as a firefighter, and the member (or eligible survivor) changes his/her election in accordance with this policy section, the total sum of money paid must be returned to the Fund within 30 calendar days of the date the revocation election is made, and before any other pension benefits can be paid. This policy will be effective at the beginning of the plan year in which it was adopted, July 1, 2010, and no member (or eligible survivor) may take any action under this policy which would have effects going back prior to that date.

If the individual was a DROP participant, the DROP account will be restored with monthly benefit postings, bi-weekly employee contributions, and earnings up to the date the member leaves active service.

Nothing herein or in Section 11(f) of the Statute shall be construed to qualify the member (or eligible survivor) for a type of benefit for which the member (or eligible survivor) would not otherwise be eligible.

Any election required or permitted under the Statute or these Pension Benefits Policies to make a member's pension effective on the date the member ceases to carry out the member's regular duties as a firefighter (or any similarly worded choice or election) shall be applied only to allow a pension effective date that is the first day of a period in which the member never returns to work as a firefighter in any position or capacity on a full-time basis prior to leaving employment with the City of Houston Fire Department. Additionally, such an election shall be applied only to allow a pension effective date that is a maximum of two years prior to the date of the election.

18.06 Compensation Limit Under Internal Revenue Code

In determining the amount of any member's Fund benefits, the amount of compensation taken into account with respect to such member for any Plan Year under any provision of the Plan shall not exceed the \$200,000 annual limit of Section 401(a) (17) (A) of the Internal Revenue Code as such amount may be increased from time to time under Section 401(a) (17) (B) of the Internal Revenue Code.

19.00 Designation of Overtime Pay to Pay Periods

At the end of 2005, the City of Houston, through its Fire Department (HFD), represented to the Fund that it will, in accordance with its regular payroll practices, officially and promptly provide data to the Fund allocating or designating member overtime paid to the HFD pay period in which it was actually earned. As long as the foregoing City of Houston payroll practice shall be in place, the Fund shall, upon receipt of reliable data, proceed to assign, making all associated adjustments, the overtime worked to the pay period in which it was earned. The assignment of overtime to *the pay period in which it was earned* shall be effective for all purposes of determining, under the Statute, the amount of pay counted for a pay period, in order to credit such overtime pay (for pension purposes), to the extent applicable under the statute, on an accrual basis to pay periods, regardless of the pay period in which the overtime was actually paid to the member by the City of Houston.

20.00 [Reserved for Future Additions]

21.00 Post Retirement Option Plan (PROP) Policies and Procedures

21.01 Introduction

The purpose of this policy is to provide a coordinated and fully documented outline of the general rules for applicants electing to participate in the Post Retirement Option Plan ("PROP") of the Houston Firefighters' Retirement and Relief Fund ("Fund") as provided in Section 5A of the Statute. This policy is intended to provide those associated with the process (members of the Fund, members' surviving spouses, the Fund's Board of Trustees ["Board"], and the Fund's staff) with a detailed outline of the steps, time frames, and rules regarding PROP.

Participation in PROP involves complicated tax implications, therefore members (or surviving spouses) who elect to participate in PROP should seek professional advice concerning their participation in PROP from their personal tax advisor, financial planner, attorney, or other professional who is knowledgeable about the rules for required minimum distributions ("RMDs") at age 70-1/2, and taxation of distributions from tax qualified governmental plans. Failure to obtain competent legal and tax advice pertaining to your

individual circumstances prior to the PROP election or during the period of PROP participation can lead to severe and adverse financial consequences.

Notwithstanding any provision of this policy, as of July 1, 2017 a PROP participant may not have any additional amounts credited to his or her PROP account, nor shall any member be allowed to elect to participate in the PROP if such member was not already a PROP participant on July 1, 2017.

21.02 PROP Eligibility

The following persons may elect to participate in the PROP:

- A. 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 the Statute; or
- B. 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 the Statute (this includes a member who receives taxable disability benefits); or
- C. A surviving spouse of a member who elects and is eligible to participate in the PROP by continuing a deceased member's PROP account or by establishing a PROP account in which to receive credits from all or part of the surviving spouse's survivor benefits. This includes surviving spouses of members who received (or would have received) taxable benefits as defined in 21.02(A) and 21.02(B).

21.03 PROP Election Process

A. A member of the Fund (or a surviving spouse) who desires to participate in PROP must schedule an appointment with a Member Services Representative of the Fund forty-five (45) calendar days or more prior to the individual's intended effective date of participation in PROP, which must be on the first of a month. (It is recommended that a member's spouse also attend the appointment.)

B. During this appointment, staff will:

- 1) provide the member (or surviving spouse) with a copy of this policy and Section 5A of the Fund's statute pertaining to PROP;
- 2) review the contents of this policy and provide an overview of the PROP program including a general description of the potential tax consequences;
- 3) provide an application for participation in PROP ("Application"), and the PROP beneficiary election form ("PROP Beneficiary Form");
- 4) encourage the member to seek professional tax and/or legal guidance before entering the PROP;
- 5) respond to any questions the member may have concerning the contents of this policy, the Statute, the Application, and the PROP Beneficiary Form;
- 6) assist the member in completing the Application should the member voluntarily choose to elect to participate in PROP;
- 7) accept the PROP Beneficiary Form; and

8) for members who have QDROs on file with the Fund, inform the member what impact the QDRO will have on his or her monthly retirement benefit and PROP account.

C. A member who elects to participate in PROP must sign the Application, initial every page, and must verify in writing that he or she: understands the terms and conditions of PROP, as expressed in this policy and as set forth in Section 5A of the Statute; in making the PROP election, has reviewed Section 5A of the Statute and this PROP policy and fully understands the terms and conditions of the PROP program; has elected an amount of his or her monthly taxable pension benefit and/or other taxable benefits that are to be credited to the PROP account; has been advised by the Fund that he or she should consider seeking advice from a professional tax advisor; and understands that by electing to participate in PROP, he or she is thereby electing to take a future distribution of that portion of his or her benefits from the Fund payable from the participant's PROP account in a form other than a life annuity.

D. PROP Applications must meet all requirements of the Statute and the Fund's Policies and Procedures.

E. Applications must be completed and submitted to the Fund at least thirty (30) days prior to the intended effective date of PROP participation.

F. An applicant's PROP Application will be reviewed by the Pension Benefits Committee.

G. Applicants may withdraw PROP applications at any time before the Committee has approved the application. Requests to withdraw must be made in writing to the Deputy Director of Member Services.

21.04 Other Credits to PROP Accounts

The PROP account of any PROP participant will be credited monthly in the same manner as the calculation for DROP accounts as described in section 3.04(D) of these policies.

21.05 PROP Retained Within Fund Assets Until Distribution; Statement

A. A member's PROP account will be accounted for separately by the Fund in a notional account, and the member's (or surviving spouse's) assets will not physically be separated from other Fund assets until distribution. The designated portion of the retiree's or surviving spouse's monthly benefit and earnings will be credited to the notional PROP account on a monthly basis.

B. The Fund will provide each PROP participant with a balance statement of his or her PROP account on a quarterly basis.

21.06 Distributions from PROP

A. By virtue of electing to participate in PROP, a participant is also electing to take a distribution of that portion of his or her benefits from the Fund payable from his or her PROP account in a form other than a life and survivor annuity, and a PROP participant's distribution options (or those of his or her eligible survivor or beneficiary, if applicable), will be limited to the forms of distribution set forth below.

B. To the extent permissible under federal tax laws, the Statute and these policies and procedures concerning PROP, as may be amended from time to time, payment of a PROP participant's PROP account can be made by means of:

1) a single sum distribution of the balance in the PROP account; or

2) partial payments as the PROP participant may elect in writing from time to time to receive, using such form or forms as are approved by the Fund, and following such specific procedure or procedures, as the Fund may require. Such partial payments shall be subject to minimum distribution amounts as determined by the Fund and may be made:

- (1) up to four times a year on any Fund business day; and/or
- (2) in recurring (i) monthly distributions; or (ii) quarterly distributions.

C. Once a total distribution of the PROP account balance has been made to the PROP participant, no additional contributions to a PROP account for that individual will be allowed.

D. A PROP participant can elect to receive his or her form of distribution by filing a completed PROP Distribution Form with the Fund.

E. The Fund will provide PROP participants with PROP Distribution Forms upon request. A PROP participant may elect at any time to receive a single distribution of his or her entire remaining unpaid PROP balance, and such request must be made at least five Fund business days from the desired date of distribution.

F. PROP Distribution Forms will be processed by the Fund on a regular basis, three to five business days from the date that the Fund receives the form.

G. No PROP benefit will be paid to a beneficiary (either statutory or designated) until such time as the Fund receives sufficient documentation of the PROP participant's death. A Death Certificate (or Pending Death Certificate) would be deemed "sufficient documentation" of a PROP participant's death.

H. Pursuant to a QDRO, if an alternate payee is specifically awarded a dollar amount or a percentage of the member's PROP account, such amount or percentage will be distributed in the form specified in Subsection "B" above in accordance with the member's election. Any alternate payee entitled to distribution of a PROP benefit will be provided with a Tax Notice, Distribution Election Form, and Withholding Election Form (as applicable) and will be requested to complete and return the Forms prior to a distribution.

I. Notwithstanding any other provision of this Policy, in connection with a PROP participant's attainment of age 70½, the PROP participant must provide the Fund with a PROP Distribution Form requesting the Required Minimum Distribution (RMD) for the calendar year (in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986). If the Fund does not receive a distribution form by December 1st, the Fund may distribute the RMD to the PROP participant's account or address on file with the Fund.

21.07 Beneficiary Designation for PROP Participants

A. Should a PROP participant die before complete distribution of the member's PROP account, the member's PROP account balance may be paid to the member's eligible spouse, or retained in the Fund as outlined in Section 5A(h) of the Statute. Other eligible survivors or designated beneficiaries must take a complete distribution of their PROP funds as soon as administratively practicable after the member's date of death.

In no instance shall PROP account balances payable after a member's death to a beneficiary other than a member's eligible spouse accrue interest or other increases after the member's date of death. *If the correctness of any person's status as a beneficiary or the amount of PROP account balance payable to a beneficiary is in question (as determined in the sole and sound discretion of the Fund's administration), whether explicitly or implicitly, due to a pending legal proceeding of which the fund has actual knowledge,*

then any portion of such balance to be paid to the eligible spouse that is not in dispute shall be distributed or retained per section 5(j) of the Statute. The remainder shall be held by the fund pending resolution of the issue in pending litigation and any remaining balance that has been resolved as payable to the eligible spouse shall be accorded interest up through such resolution as though the eligible spouse had elected to retain that remainder to the date of resolution as outlined in section 5(j).

B. A PROP participant may designate a beneficiary to receive, upon his or her death, the balance of his or her PROP account, in the event there is no eligible survivor.

C. Should a PROP participant desire to change his or her designated PROP beneficiary, the PROP participant must execute a new PROP Designation of Beneficiary Form, which will be provided, upon request, by the Fund. The effect of the PROP Designation of Beneficiary Form is to revoke all prior beneficiary designations for the PROP participant's PROP benefits. The change in beneficiary designation will only be effective upon delivery of the new, original PROP Designation of Beneficiary Form to the Fund prior to the PROP participant's death.

D. A member should designate a contingent PROP beneficiary in the event the first PROP beneficiary dies prior to the member.

E. Any survivor or beneficiary eligible for payment under this section must request and apply for such payment by completing forms required by the Fund and available by contacting the Fund and asking for a Member Services Representative through the pension office in addition to providing the marriage and/or birth certificate(s) necessary to verify eligibility. No death benefit will be processed for payment without a Death Certificate (or Pending Death Certificate) certifying the death of the member. In instances where payment is made through a trustee or to an estate, verifiable proof of trusteeship must also be provided or be on file.

21.08 The Combination of PROP and DROP accounts is not permitted

A. DROP balances are not permitted to be placed into or combined with PROP balances;

B. PROP balances are not permitted to be placed into or combined with DROP balances.

21.09 Changes to PROP at Discretion of the Fund

(A) The Board or an appropriate committee of the Board may change the rules, policies and procedures concerning PROP participation to protect the interests and well-being of the Fund. By participation, the participant expressly consents to any future changes in PROP rules, policies and procedures. Examples of possible changes include, but are not limited to the following:

(1) The Board, or the appropriate HFRRF committee, may set a date after which additional members or surviving spouses will not be allowed to elect to participate in the PROP.

(2) The Board, or the appropriate HFRRF committee, 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.

(3) The Board, or the appropriate HFRRF committee, may limit the number of distribution transactions for all PROP participants or for any category of PROP participants.

21.10 Taxation of PROP Credits

Amounts credited to the PROP account are not included in the participant's gross income until distributed to the Participant by the Fund as described in the section 21.05 above, thus deferring the federal income tax on such amounts. This is one of the primary advantages to PROP. There are certain tax implications on distributions from a qualified plan prior to the age of 59-1/2 and after the age of 70-1/2. **These tax implications can have severe adverse financial consequences (see Section 21.01).**

- 21.11 Beginning at the inception of the year in which the Fund member reaches age 70 and 1/2, no portion of the member's monthly pension benefit may be elected as a contribution to the member's PROP account. If the member died before the year in which he or she would have attained age 70 and 1/2, no portion of the surviving spouse's monthly survivor benefit may be elected as a contribution to the surviving spouse's PROP account beginning with the inception of the year in which the member would have reached age 70 and 1/2 if he or she had survived until then.

22.00 Membership Publications and Annual Benefit Statements

- 22.01 The Fund shall distribute or make available to each member (active and retired) and eligible survivors, a summary plan description booklet that includes any significant change that is made in statutes governing the Fund that affects contributions, benefits or eligibility.
- 22.02 The Fund shall provide a summary plan description booklet to all new members of the Fund.
- 22.03 The Fund shall provide to each active member an annual statement of the amounts of the member's accumulated contributions and the total accumulated service credit on which benefits may be based. Such statements are to be sent within the first two months of the calendar year.

23.00 Retiree Directories

- A. Directories of certain information concerning retired members may be published to the extent permitted by section 17(e) of the Fund Statute, with reasonable allowance for retirees to timely opt out, and information concerning survivors that specifically and timely provide their written consent to inclusion or request in writing to be included may also be included in such a Retiree Directory.
- B. The Retiree Directory or pages of the Retiree Directory may contain whichever form or wording appears reasonable to help protect the information of the persons listed in the Retiree Directory from being used for inappropriate purposes.
- C. The electronic file containing past or current retiree and survivor information for use in publishing a Retiree Directory or that constitutes the electronic form of the Retiree Directory shall be provided only to a retiree [or survivor receiving benefits from the Fund] who attests by sworn, notarized statement that s/he is visually impaired and that only voice recognition software requiring access to an electronic file will allow the retiree [or survivor receiving benefits from the Fund] to access the information in the Retiree Directory. Such a retiree [or survivor receiving benefits from the Fund] shall provide a signed, sworn and notarized statement, the form of which shall be provided by the Fund, attesting to the need for the electronic file for the reason described above and also that the retiree [or survivor receiving benefits from the Fund] will take the steps identified in the form for protection of the information in the electronic file. Prior to provision of an electronic file, the attesting retiree [or survivor receiving benefits from the Fund] shall also obtain and provide to the Fund a brief treating physician's statement verifying the visual impairment and inability to effectively review the printed pages of the Retiree Directory.

24.00 Provisions Regarding Nonforfeitability of Benefits as Required Under Internal Review Code

24.01 *Nonforfeitability of Benefits Upon Attainment of Normal Retirement Age*

A member's accrued Fund benefits shall be, and are, fully nonforfeitable (i.e., "vested") as determined under the Code, United States Treasury regulations and Internal Revenue Service rulings and notices applicable to public retirement systems, no later than the member's attainment of "normal retirement age," as such age is stated in Section 1(13-a) of Article 6243e.2 (1).

24.02 *Nonforfeitability of Benefits to the Extent Funded Upon Fund Termination or Partial Termination*

A member's accrued Fund benefits shall, to the extent funded, be, and are fully nonforfeitable (i.e., "vested,") upon the Fund's termination or partial termination, as the terms "termination" and "partial termination" are defined under the Code, United States Treasury Department regulations and Internal Revenue Service rulings and notices applicable to public retirement systems.

25.00 Designation of Fund Benefits Pending Resolution of Disputed Conservatorship

During any period in which the status of conservatorship, guardianship or other status of a person who claims to be responsible for receipt of Fund benefits payable to a minor or disabled survivor on behalf of such minor or disabled survivor is being determined by the Designee, the Board, or a court of competent jurisdiction, the Designee shall direct that any benefits that may otherwise be in pay status and which are in dispute, be held in suspense pending resolution. Such suspense shall not affect eligibility or the amount of benefit ultimately distributed. (For the policy and procedures relating to suspense of disputed benefits in the context of determination of a Domestic Relations Order please see section 7.05B of these Pension Benefits Policies).

26.00 Provisions Regarding Section 415 of the Internal Revenue Code

26.01 Incorporation of Section 415 by Reference

Pursuant to Section 14(a) of Article 6243e.2 (1) (Section 14(a) of the "Statute") and the Treasury's final Section 415 regulations (Treas. Reg. § 1.415(a)-1(d)(3)), the Fund incorporates Section 415 of the Code by reference.

26.02 Meaning of "Accrued" For Governmental Plans Under Final Section 415 Regulations

In keeping with the special rule for governmental pension plans under Section 414(d) of the Code contained in the Treasury's final Section 415 regulations (Treas. Reg. § 1.415(b)-1(a)(7)(iii)), a benefit will be treated as having accrued for purposes of Section 14(a) of the Statute only to the extent it is payable.

26.03 Limitation Year

The Fund's limitation year is the calendar year, beginning each January 1 and ending the next December 31. [Also as stated per section 15.02 of this policy]

26.04 Increases in Section 415 Limit After Separation From Service

Pursuant to Treas. Reg. § 1.415(a)-1(d)(3)(v)(C), the Fund specifies that it will apply annual increases pursuant to Section 415(d) of the Code in the dollar limit of IRC § 415(b)(1)(A) to members who have separated from service, as well as to those who have not.

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.