

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION LAW 2017-71

AN ACT TO AMEND THE LAW ESTABLISHING THE CHARLOTTE FIREMEN'S  
RETIREMENT SYSTEM.

TITLE I. PREFACE.

**Section 1. Introduction.** The Charlotte Firemen's Retirement System heretofore established pursuant to the provisions of Chapter 926 of the 1947 Session Laws, as amended, is hereby continued and shall hereafter be known as the Charlotte Firefighters' Retirement System. The purpose of the Charlotte Firefighters' Retirement System shall be to provide retirement, disability and survivor benefits for the uniformed employees of the Charlotte Fire Department who are entitled thereto under the provisions of this act. This act shall be officially known and may be referred to as the Charlotte Firefighters' Retirement System Act.

**Section 2. Definitions.** The following words and phrases as used in this act shall have the indicated meanings unless a different meaning is clearly required by the context.

(1) 'Accrued Benefit' means the amount of monthly retirement benefits earned by a Member computed, as of any date, on his Final Average Salary and Membership Service Credit as of such date. In no event shall the Accrued Benefit be less than the Accrued Benefit as of June 30, 1986.

(1a) 'Act' means Chapter 926 of the 1947 Session Laws, as amended.

(2) 'Actuarial Equivalent' means a benefit payable by the System that is determined by the Actuary to be equal to the basic benefit provided by the System based on the interest rate and the mortality and other tables and assumptions adopted for such purposes by the Board of Trustees. In no event shall any Actuarial Equivalent be less than the corresponding Actuarial Equivalent as of June 30, 1987, based on the Accrued Benefit and the assumptions in effect on that date.

(3) 'Actuarial Valuation' or 'Valuation' means a determination of the normal costs, actuarial accrued liability, actuarial value of assets and related actuarial present values of the System performed by an Actuary which are based on the characteristics of the System. Such characteristics include, but are not limited to, age, service, salaries, and rate of turnover by death, disability, termination or retirement.

(3a) 'Adjustment Factor' means the cost of living adjustment factor prescribed by the Secretary of the Treasury under section 415(d) of the Code for years beginning after December 31, 1987, applied to those items and in the manner the Secretary prescribes.

(4) 'Armed Forces' means the Armed Forces of the United States of America.

(5) 'Audit' means an examination of the accounting records of the System performed by a certified public accountant or certified public accounting firm. Such examination is to determine if said records are properly maintained and to make recommendations and suggestions for better record-keeping and management.

(6) 'Beneficiary', 'Designated Beneficiary', or 'Surviving Beneficiary' means any person, or persons, who is in receipt of, or who is designated in writing to receive, a retirement benefit or other benefit as provided in this act.

(7) 'Board of Trustees', 'Board' or 'Trustees' means the Board of Trustees of the Charlotte Firefighters' Retirement System, as specified in Section 29, or any individual Member thereof.

(8) 'City' means the City of Charlotte.

(8a) 'Code' means the Internal Revenue Code of 1986, as amended.

(9) 'Compensation' means the remuneration reportable on Form W-2 earned by a Member for services performed as an employee of the Charlotte Fire Department prior to any reductions pursuant to Sections 125, 401(k), 402(e)(3), 414(h)(2), 403(b), 408(k)(6) and 457 of the Internal Revenue Code. Compensation shall include payments for unused sick and vacation days, longevity payments, bonus payments and merit increases. For the purpose of calculating a Member's Final Average Salary, (i) payments for unused sick and vacation days shall be included as Compensation to the extent the vacation and sick days, for which payments are made, could have accrued during two Plan Years of the Member's last five years of Membership Service, and (ii) payments for longevity shall be included as Compensation to the extent such payments were made during two Plan Years of the Member's last five years of Membership Service. Effective July 1, 2002, for purposes of applying the limitations described in Section 51 of this Act, compensation paid or made available during such limitation years shall also include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

In addition to the other applicable limitations set forth in this Act, and notwithstanding any other provision of this Act to the contrary, for Plan Years beginning on or after January 1, 2002, the annual Compensation of each Member taken into account under the Act shall not exceed two hundred thousand dollars (\$200,000), the annual compensation limit under Section 401(a) (17) of the Internal Revenue Code, as amended by Section 611(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001. Annual compensation means compensation during the Plan Year or such other 12-month period over which Compensation is otherwise determined (the "determination period"). If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, the compensation limit for any prior determination period shall be two hundred thousand dollars (\$200,000). The two hundred thousand dollars (\$200,000) limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code.

(9a) 'Death Benefit Recipient' means any person who is in receipt of benefits payable as specified in Section 21.

(10) 'Effective Date' of this amended and restated act means July 1, 2001, unless otherwise specified herein.

(11) 'Final Average Salary' means, effective with respect to Plan Years beginning on 2017 Act- approved by NC Legislature

and after July 1, 2001, the higher amount of (i) the monthly average Compensation received during the two highest consecutive Plan Years of the Member's last five years of Membership Service or (ii) the monthly average Compensation received during the 104 weeks preceding the end of the Member's Membership Service. If a Member has less than two years of Membership Service, his Final Average Salary shall mean the monthly average Compensation for his total Membership Service. For the purpose of calculating a Member's Final Average Salary, (i) payments for unused sick and vacation days shall be included as Compensation to the extent the vacation and sick days, for which payments are made, could have accrued during two Plan Years of the Member's last five years of Membership service, and (ii) payments for longevity shall be included as Compensation to the extent such payments were made during two Plan Years of the Member's last five years of Membership Service.

(12) 'He', 'Him', 'His', and any other pronouns and terms shall be used when referring to both male and female Members and/or Beneficiaries of this System, and vice versa.

(13) 'Investment Fiduciary' means any person, or persons, who exercises any discretionary authority or control in the investment of the System's assets and/or renders investment advice for a fee to the System.

(14) 'Majority Vote' means that number of votes which is more than fifty percent (50%) of the System Members casting ballots.

(15) 'Member' means an employee of the Charlotte Fire Department who is subject to the provisions of the Civil Service Act contained in Chapter 333 of the 1969 Session Laws as amended, and, in addition, shall include the chief of the fire department where the chief was subject to the provisions of the Civil Service Act immediately prior to being appointed fire chief, and any probationary employee or officer of the fire department under the Civil Service Act.

(16) 'Membership Service Credit' or 'Membership Service' means the amount of service credited to a Member as provided in this act to determine what, if any, benefits are due him.

(17) 'Participant' means any Member, Retiree, Beneficiary in receipt of benefits or a former Member with a deferred Accrued Benefit.

(17a) 'Qualified Participant' means a Participant who is in a defined benefit plan that is maintained by a State or a political subdivision thereof; and who has at least 15 years of Membership Service Credit as a full-time employee of any police department or fire department that is organized and operated by the State or a political subdivision, that maintains such a defined benefit plan; or who is a member of the armed forces of the United States.

(18) 'Retiree' means any person who retires with a retirement benefit payable by the System.

(19) 'Retirement System' or 'System' means the Charlotte Firefighters' Retirement System.

(20) 'Total Contributions' means the sum of the amounts paid by or on behalf of a Member and credited to his individual account by the System.

(20a) 'Trustee' means any individual member of the Board of Trustees of the Charlotte Firefighters' Retirement System, as specified in Section 29 of this act.

(21) 'Year,' 'Plan Year,' or 'Limitation Year' means the twelve months from July 1 through June 30

## **TITLE II. MEMBERSHIP SERVICE CREDIT.**

**Section 3. General.** A Member of this Retirement System shall receive Membership Service Credit for all periods of employment with the Charlotte Fire Department for which contributions have been paid to, and not subsequently refunded by, the Charlotte Firefighters' Retirement System. In no case shall more than one year of Membership Service Credit be credited a Member for any 12 calendar month period of time.

**Section 4. Periods of Workers' Compensation & Accident and Sickness, Family Medical Leave Act, and Long-Term Disability Benefits.** Membership Service Credit shall be credited to a Member for any periods of workers' compensation, accident and sickness, Family Medical Leave Act, or long-term disability benefits for which said Member contributes to the Charlotte Firefighters' Retirement System an amount equal to the Compensation the Member would have earned multiplied by 12.65%. Such contributions must be made within a 12 calendar month period from and after the date the Member returns to employment with the Charlotte Fire Department and prior to the Member's termination of membership or retirement.

**Section 5. Reinstatement of Membership Service Credit Previously Forfeited.** Membership Service Credit shall be credited for previous Membership Service for a Member who is re-employed by the Charlotte Fire Department within five years of the termination date of his previous employment, and provided the Member has not received reimbursement of his contributions pursuant to the provisions of this act.

**Section 6. Return from Active Military Duty.** Membership Service Credit shall be credited to any Member who entered the Armed Forces of the United States of America during World War I, World War II, the Korean War, any period of national emergency conditions, or entered the Armed Forces at any time through the operation of the compulsory military service law of the United States of America, upon the return to membership employment with the Charlotte Fire Department. Such Membership Service Credit shall include the period of active military service and any period after discharge or release from active duty from the Armed Forces for which his reemployment rights are guaranteed by law unless otherwise specified in this act. Notwithstanding anything contained in this Section 6 to the contrary, effective as of December 12, 1994, the Act shall at all times be construed and enforced according to the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994.

### **Section 7. Purchase of Membership Service Credit.**

(a) Military Service. Effective July 1, 1999, Membership Service Credit for prior active military duty may be purchased upon the completion of five years of Membership Service Credit by any Member who served on active duty in the Armed Forces of the United States of America prior to his employment with the Charlotte Fire Department. Such Membership Credit shall be purchased by the Member before termination of membership or retirement.

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The amount of Membership Service Credit that may be purchased by a Member will be equal to the actual active military duty by the Member not to exceed five years and shall be credited upon the payment of the required contributions as determined by the Administrator, provided that the Membership Service to be so credited shall not be credited in any other retirement system, except the national guard or any reserve component of the Armed Forces of the United States. The required contributions shall be an amount equal to the annualized Compensation rate the Member earned when he first entered membership in the Retirement System, multiplied by the sum of the Member and the City of Charlotte contribution rates in effect at the time when he first entered membership in the Retirement System, increased by five percent (5%) compounded per annum from the date of membership to the date of the payment of the required contributions and multiplied by the number of years and days of Membership Service to be credited. Membership service credit purchased pursuant to this section cannot be used to meet the minimum service requirements for a non-duty disability retirement benefit or an early service retirement benefit, but may be used to meet the minimum service requirements for a service retirement benefit and to compute the amount of any retirement benefit.

(b) Local, State, and Federal Government Service. Membership Service Credit for prior public employment may be purchased upon completion of five years of Membership Service Credit by any Member who was employed by any state, governmental subdivision of any state, or the federal government prior to his current employment with the Charlotte Fire Department. Such Membership Service Credit shall be purchased by the Member before termination of membership or retirement. A Member may purchase one year of Membership Service Credit for every two years of prior government service. The maximum amount of Membership Service Credit that may be purchased is five years. The purchased Membership Service Credit shall be credited upon the payment of the required contributions, provided that the Membership Service to be so credited shall not be credited in any other retirement system. The required contributions shall be the full actuarial cost as determined by the System's actuary. Membership service credit purchased pursuant to this section cannot be used to meet the minimum service requirements for a non-duty disability retirement benefit or an early service retirement benefit, but may be used to meet the minimum service requirements for a service retirement benefit and to compute the amount of any retirement benefit.

(c) Withdrawn Service. Any Member who withdrew his contributions in accordance with the provisions of this Act and who subsequently returns to service, may upon completion of five years of Membership Service Credit, purchase the withdrawn service. Such Membership Service Credit shall be purchased by the Member before termination of membership or retirement. The maximum amount of Membership Service Credit that may be purchased by a Member is equal to the prior years of service with the Charlotte Fire Department and shall be credited upon the payment of the required contributions, provided that the Membership Service Credit to be so credited shall not be credited in any other retirement system. The required contributions shall be the full actuarial cost as determined by the System's actuary. Membership service credit purchased pursuant to this section cannot be used to meet the minimum service requirements for a non-duty disability retirement benefit or an early service retirement, but may be used to meet the minimum service requirements for a service retirement benefit and to compute the amount of any retirement benefit.

**Section 8. Accumulated Sick Leave and Vacation at Retirement.** Membership Service Credit shall be credited to a Member for the balance of any unpaid sick leave and/or unpaid vacation at the time of his retirement, excluding any sick leave and/or vacation that was converted to a qualified deferred compensation program as defined by the City. Such Membership Service Credit shall be determined by the Administrator and shall be proportional based on the normal work schedule of the Member. Such Membership Service Credit cannot be used to meet the minimum qualifications for a disability retirement benefit, vested benefit or early retirement benefit, but may be used to meet the minimum qualifications for a service retirement benefit.

**Section 9. Determination by Board of Trustees.** In any case of doubt as to the period of Membership Service Credit to be so credited any Member, the Board of Trustees shall have final authority to determine such period.

### **TITLE III. TERMINATION OF MEMBERSHIP.**

**Section 10. Members With Less Than Five Years of Membership Service Credit.** (a) If a Member with less than five years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said former Member shall thereupon cease membership and shall be entitled to reimbursement of the contributions made by the Member. The former Member shall not be entitled to any contributions made on the former Member's behalf by the City of Charlotte under the provisions of Section 25 of this Act or to any interest which has accrued on his contributions or any contributions made on the Member's behalf. A former Member desiring reimbursement of said contributions must complete and file the form 'Application for Refund of Accumulated Contributions' with the Administrator within five years of the termination date of his employment. Should a former Member fail to complete and file said form with the Administrator within such five years, the former Member shall receive reimbursement of said contributions as provided in this Act.

(b) If such a former Member dies within five years after terminating his employment prior to receiving reimbursement of contributions pursuant to subsection (a) of this section, his Designated Beneficiary(s) on file with the Retirement System or his personal representative in the absence of any Designated Beneficiary, may apply for reimbursement of contributions pursuant to subsection (a) of this section and must file such application with the Administrator within five years of the date of death of the former Member or the funds will be paid to the Designated Beneficiary, if living, or otherwise to the former Member's estate.

**Section 11. Members With Five or More Years of Membership Service Credit.**

(a) Effective July 1, 1989, if a Member with five or more years of Membership Service Credit with this Retirement System ceases employment with the Charlotte Fire Department, whether voluntarily or involuntarily, the Member shall receive his Accrued Benefit and defer this benefit until the Participant reaches 60 years of age. The Accrued Benefit shall be calculated pursuant to the provisions of Sections 15 and 17 of this act in effect on the last day of

work by said Participant. If such Participant dies before applying for his deferred benefits and attaining age 60 years, reimbursement of the Participant's contributions may be accomplished in the same manner and in all respects as in Section 10 of this act.

(b) As an alternative to the provisions of subsection (a) of this section, if a Member with five or more years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said Member shall thereupon cease membership and may elect to receive reimbursement of his contributions plus interest compounded annually at a rate of four percent (4%) per year, with the right reserved to the Board of Trustees to set a different rate from time to time. The former Member shall not be entitled to any contributions made on his behalf by the City of Charlotte under the provisions of Section 25 of this Act or to any interest on such contributions.

### **Section 12. Failure to Return From Active Military Duty.**

(a) Generally. Should any Member of this Retirement System who entered the Armed Forces of the United States of America pursuant to the provisions of Section 6 of this act fail to return to employment with the Charlotte Fire Department within the period for which his reemployment rights are guaranteed by law, said Member shall thereupon cease membership and shall be entitled to a deferred benefit or reimbursement of his contributions in the same manner and in all respects as provided for in Section 10 or 11 of this act, whichever is applicable.

Such former Member shall not receive Membership Service Credit for the period of active military duty or any period after discharge or release from active duty from the Armed Forces for which his reemployment rights had been guaranteed by law.

(b) Death or Disability. In the case of a death or disability occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in section 414(u) of the Code), the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the System as if the Member had resumed and then terminated employment on account of death.

(c) Benefit Accrual. For benefit accrual purposes, the System treats an individual who, on or after January 1, 2007, dies or becomes disabled (as defined under the terms of the System) while performing qualified military service with respect to the Charlotte Fire Department as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. The System will determine the amount of Member contributions of an individual treated as reemployed under this section for purposes of applying section 414(u)(8)(C) of the Code on the basis of the individual's average actual employee contributions for the lesser of (i) the 12-month period of service with the Sponsor immediately prior to qualified military service or (ii) if service with the Sponsor is less than such 12-month period, the actual length of continuous service with the Sponsor.

(d) Differential Wage Payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by section 3401(h)(2) of the Code, shall be treated as a Member of the Sponsor making the payment; (ii) the differential wage

payment shall be treated as compensation; and (iii) the System shall not be treated as failing to meet the requirements of any provision described in section 414(u)(I)(C) of the Code by reason of any contribution or benefit that is based on the differential wage payment.

**Sec. 13.** Repealed by Section 7 of Chapter 248 of the 1989 Session Laws.

**Sec. 13.1. Direct Rollover of Eligible Rollover Distributions.** (a) This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions.

(1) 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 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and any hardship distribution. A portion of a distribution shall not fail to be an eligible rollover distribution merely because a portion consists of after-tax employee contributions which are not includible 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 which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible retirement plan. An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. With respect to distributions made after December 31, 2001, an eligible retirement plan shall also mean (i) an annuity contract described in Section 403(b) of the Code and (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

(3) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee'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.

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

(5) Non-spouse beneficiary rollover right. For distributions after December 31, 2009, a non-spouse beneficiary who is a “designated beneficiary” under section 401(a)(9)(E) of the Code and the regulations thereunder, by a direct trustee-to-trustee transfer (direct rollover), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an “eligible rollover distribution” under section 401(a)(31) of the Code. If a non-spouse beneficiary receives a distribution from the System, the distribution is not eligible for a 60-day (non-direct) rollover. If the Participant’s named beneficiary is a trust, the System may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of section 401(a)(9)(E) of the Code. A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

(6) Roth IRA rollover. For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an “eligible rollover distribution” to a Roth IRA described in section 408A(b) of the Code.

(c) In the event of a mandatory distribution greater than one thousand dollars (\$1,000) that is made without the Member’s consent and is made to the Member before the Member attains the later of age 62 or Normal Retirement Age, if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution from the Plan, the Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

### **Sec. 13.2. Acceptance of Rollovers and Transfers From Other Plans.**

(a) Effective January 1, 2002, and subject to the provisions of federal law, the Retirement System may accept an eligible rollover distribution, as defined in Section 13.1, or a direct trustee-to-trustee transfer of funds from an eligible retirement plan, as defined in Section 13.1, for the purchase of Membership Service Credit pursuant to Section 7. The amount of the rollover distribution or trustee-to-trustee transfer accepted by the Retirement System shall not exceed the cost of service to be purchased.

(b) In order to authorize the rollover or transfer of funds described in this section, a Member shall provide or cause to be provided to the Retirement System information sufficient for the Retirement System to reasonably conclude that the contribution is a valid rollover or direct trustee-to-trustee transfer as permitted under federal tax law. If the Retirement System

later determines that a contribution was an invalid rollover or trustee-to-trustee transfer or otherwise not permitted under federal tax law, the Retirement System may take any action appropriate or required by the Internal Revenue Code or regulations issued there under, including a return of the invalid contribution and cancellation of any credit purchased with the returned amounts.

(c) The Retirement System shall construe and administer this section in a manner such that the Retirement System plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code.

**Sec. 14. Retirement of Member.** Upon his retirement pursuant to the provisions of this act, a Member shall thereupon cease membership in the Charlotte Firefighters' Retirement System.

#### TITLE IV. BENEFITS

**Sec. 15. Service Retirement.** A Member may upon written application through the Administrator to the Board of Trustees set forth an effective date of not less than 30 days nor more than 90 days subsequent to the execution and filing thereof that he desires to be retired, provided that he has attained the age and acquired the required Membership Service Credit and has been approved by the Board:

- (1) The age and Membership Service Credit requirements for service retirement are as follows:
  - a. Any age and 30 or more years of Membership Service Credit;
  - b. Age 50 years or older and 25 or more, but less than 30 years of Membership Service Credit; or
  - c. Effective July 1, 1989, age 60 years or older and 5 or more, but fewer than 25 years of Membership Service Credit.
- (2) Upon a Member's service retirement, he shall be paid a benefit as provided in Section 17 of this act.

**Sec. 16.** Repealed by Section 9 of Chapter 248 of the 1989 Session Laws.

**Sec. 17.** (a) Effective July 1, 1998, upon retirement pursuant to the provisions of Section 15 of this act, a Member shall receive a monthly benefit equal to two and six-tenths percent (2.6%) of his Final Average Salary multiplied by his Membership Service Credit, Salary limits imposed by section 415 of the Internal Revenue Code, as amended, but not less than nine hundred two dollars and seventy-five cents (\$902.75). The benefit payable pursuant to this subsection shall be referred to as the basic benefit.

(b) Prior to his retirement, but not thereafter, a Member may elect to receive an Actuarial Equivalent, computed as of the effective date of his retirement, of his basic benefit from subsection (a) of this section in a reduced monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the provisions of option 1, 2, 3, 4, 5 or 6 as set forth below. Actuarial Equivalent for all Members retiring prior to July 1, 1987, shall be computed in accordance with the Group Annuity Table for 1951 with interest at four percent (4%). Actuarial Equivalent for all Members retiring after June 30, 1987, shall be computed in accordance with the Unisex Mortality Table for 1984 set forward one year in age with interest at six percent (6%). If a Member does not have an option election in force at the time

of his retirement, his monthly benefit shall be paid as the basic benefit.

(c) Option 1. Benefit for 10 Years Certain and Life Thereafter. A Retiree shall receive a reduced basic benefit payable monthly throughout his life with the provision that if he dies before he has received 120 monthly payments, the payments will continue for the remainder of the 120-month period to such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(d) Option 2. 100% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees prior to retirement but not thereafter.

(e) Option 3. 75% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death seventy-five percent (75%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees prior to retirement but not thereafter.

(f) Option 4. 66 2/3% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death sixty-six and two-thirds percent (66 2/3%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees prior to retirement but not thereafter.

(g) Option 5. 50% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death fifty percent (50%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees prior to retirement but not thereafter.

(h) Option 6. A Retiree may elect any of Options 2 through 5 with the added provision that in the event the Designated Beneficiary predeceases the Retiree, the monthly benefit payable to the Retiree after the Beneficiary's death shall be equal to the basic benefit. Such election will result in a benefit that is further reduced than the corresponding benefit payable under Options 2 through 5 if this Option 6 has not been elected. The intent of this additional reduction is to support the additional cost of this election.

(i) In the event that a Retiree who named his spouse as Beneficiary in accordance with the provisions of Options 1 through 6 and shall subsequently become divorced from the named Beneficiary, the Retiree may then elect a life annuity which shall be the Actuarial Equivalent of the value of all future benefit payments under the option then in effect upon written request to the Board of Trustees provided such request is not inconsistent with the terms of the divorce decree. It is the Retiree's responsibility to provide all pertinent documentation.

**Sec. 18. Early Retirement.** A Member may upon written application through the Administrator to the Board of Trustees set forth an effective date of not less than 30 days nor more than 90 days subsequent to the execution and filing thereof that he desires to be retired, provided that he has acquired 25 or more, but less than 30 years of Membership Service Credit and is less than age 50 years. Upon a Member's early retirement, he shall receive a benefit as provided in Section 17, except such benefit shall be reduced by twenty-five one-hundredths of

one percent (.25%) for each whole month the early retirement date precedes the Member's attainment of age 50 years.

**Sec. 19. Disability Retirement in the Line of Duty.**

(a) An 'Application for Disability Retirement in the Line of Duty' shall be filed by the Member or his department head with the Administrator, provided that the Member has applied for and been granted workers' compensation benefits on account of this disability.

(b) An 'Application for Disability Retirement in the Line of Duty' shall be administered pursuant to the Disability Regulations adopted by the Board of Trustees from time to time and approved by the City of Charlotte and administered in a uniform and nondiscriminatory manner. The Administrator shall request the Board of Trustees to conduct a hearing on the Application for Disability Retirement in the Line of Duty pursuant to the provisions of the Disability Regulations. The Member or any person filing on the Member's behalf or the Administrator may appeal from any order of the Board to the Superior Court of Mecklenburg County, within 10 days of the order. The appeal to the Superior Court shall be upon the record of the proceeding before the Board at the hearing.

(c) Effective July 1, 1999, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to the greater of seventy-eight percent (78%) of Final Average Salary or two and six-tenths percent (2.6%) of Final Average Salary multiplied by his Membership Service Credit, not to exceed the Final Average Salary limits imposed by section 415 of the Internal Revenue Code, as amended, but not less than nine hundred two dollars and seventy-five cents (\$902.75) per month. Effective July 1, 1988, prior to his retirement pursuant to the provisions of this Section, but not thereafter, a Member may elect to receive an Actuarial Equivalent, computed as of the effective date of his retirement, of his monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the provisions of the Option 5, Fifty Percent (50%) Joint and Survivor Benefit, as set forth in subsection (g) of Section 17. The Actuarial Equivalent for all Members retiring pursuant to this Section shall be computed in accordance with the Unisex Mortality Table for 1984 set forward one year in age, with interest at six percent (6%). Benefits payable under this Section shall be effective on the date of approval by the Board of Trustees or upon exhaustion of workers' compensation benefits, whichever is later. Also, disability retirement benefits payable under this Section may be adjusted by the disability retirement regulations adopted pursuant to the requirements contained in subsection (b) of this Section. A Retiree receiving disability retirement benefits shall revert to a service retirement as specified in Section 15 and shall receive the greater of such disability retirement benefits or his Accrued Benefit as determined as of the last date of active employment with the Charlotte Fire Department at such time as the Retiree's attained age and Membership Service Credit meet the requirements for a service retirement.

**Sec. 20. Disability Retirement not in the Line of Duty.**

(a) An 'Application for Disability Retirement not in the Line of Duty' shall be filed by a Member or his department head with the Administrator, provided that the Member has 10 or more years of Membership Service Credit and has applied for and been granted accident and sickness benefits on account of the disability.

(b) An 'Application for Disability Retirement not in the Line of Duty' shall be administered pursuant to rules and regulations adopted by the Board of Trustees from time to time and approved by the City of Charlotte and administered in a uniform and nondiscriminatory manner. The Administrator shall request the Board of Trustees to conduct a hearing on the Application for Disability Retirement not in the Line of Duty pursuant to the provisions of the Disability Regulations. The Member or any person filing on the Member's behalf or the Administrator may appeal from any order of the Board to the Superior Court of Mecklenburg County by giving notice of appeal, in writing, to the Superior Court, within 10 days of the order. The appeal to the Superior Court shall be upon the record of the proceeding before the Board at the hearing.

(c) Effective July 1, 1999, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to thirty-nine percent (39%) of his Final Average Salary, plus one and ninety-five hundredths percent (1.95%) of his Final Average Salary multiplied by the Membership Service Credit in excess of 10 years, not to exceed Final Average Salary limits imposed by section 415 of the Internal Revenue Code, as amended, but not less than nine hundred two dollars and seventy-five cents (\$902.75) per month. Effective July 1, 1988, prior to his retirement pursuant to the provisions of this section, but not thereafter, a Member may elect to receive an Actuarial Equivalent, computed as of the effective date of his retirement, of his monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the provisions of the Option 5, Fifty Percent (50%) Joint and Survivor Benefit, as set forth in subsection (g) of Section 17. The Actuarial Equivalent for all Members retiring pursuant to this section shall be computed in accordance with the Unisex Mortality Table for 1984 set forward one year in age, with interest at six percent (6%). Benefits payable under this section shall be effective on the date of approval by the Board Trustees. Also, disability retirement benefits payable under this Section may be adjusted by the disability retirement regulations adopted pursuant to the requirements contained in subsection (b) of this Section. A Retiree receiving disability retirement benefits shall revert to a service retirement as specified in Section 15 and shall receive the greater of such disability retirement benefits or his Accrued Benefit as determined as of the last date of active employment with the Charlotte Fire Department at such time as the Retiree's attained age and Membership Service Credit meet the requirements for a service retirement.

**Sec. 21. Death Benefits.** (a) In the event of the death of any Member of the System prior to his effective date of retirement pursuant to the provisions of Sections 15, 16, 18, 19, or 20 of this act, his Designated Beneficiary(s) on file with the Retirement System, or his personal representative in the absence of any Designated Beneficiary, shall be entitled to reimbursement of the Total Contributions by him or on his behalf and contributions by City of Charlotte to the System on his behalf; plus, interest compounded annually at rate of four percent (4%) per year on the contribution balance at the beginning of each Plan Year in which the Participant contributed or in which contributions were made on his behalf. The Board of Trustees has the right to set a different interest rate from time to time. Interest shall not apply to death benefits occurring before July 1, 1986. Such Beneficiary(s) or personal representative must complete and file the form 'Application for Survivor Death Benefits' with the Administrator to receive reimbursement. As an option, a Beneficiary may elect to receive an annuity equal to and in lieu of a lump sum distribution by so designating on the above form. Effective July 1, 1989, as an option, a surviving spouse of a deceased Member who was eligible for a service or

early retirement benefit on the date preceding death may elect to receive an Actuarial Equivalent computed as of the date preceding death in the same manner as if the deceased member had retired and elected a reduced monthly amount payable throughout his life, and nominated the surviving spouse as his beneficiary in accordance with the provisions of Option 4, Sixty-Six and Two-Thirds Percent (66 2/3%) Joint and Survivor benefit, as set forth in subsection (f) of Section 17. The Actuarial Equivalent for all benefits payable pursuant to this section shall be computed in accordance with the Unisex Mortality Table for 1984 set forward one year in age, with interest at six percent (6%).

(b) In the event of the death of a Retiree of this System receiving basic benefit payments, or the last to die of the Retiree and Beneficiary receiving an optional form of benefit payment in accordance with Section 17, and before the Retiree (or Retiree and Beneficiary, in the case of an optional form of benefit) has received monthly benefit payments equal to the present value on the effective date of retirement of the Total Contributions to the System by the Retiree and by the City of Charlotte on behalf of the Retiree, plus interest compounded annually at the rate applicable to subsection (a) above on the contribution balance at the beginning of each Plan Year in which the Retiree contributed or in which contributions were made on behalf of the Retiree, the Designated Beneficiary(s), if any, or estate of the Retiree (or estate of the Beneficiary, in the case of an optional form of benefit) shall be entitled to an amount equal to the difference between such contributions, plus interest, and the sum of the monthly benefit payments received by the Retiree (or Retiree and Beneficiary, in the case of an optional form of benefit). However, interest shall not apply to death benefits occurring before July 1, 1986. Such Beneficiary(s) or personal representative must complete and file the form 'Application for Survivor Death Benefits' with the Administrator to receive reimbursement.

**Sec. 22. Coordination of Benefits.** The Board of Trustees shall reduce the amount of any benefits payable under the provisions of this section by any amount of benefits being concurrently paid to a Retiree by or on behalf of the City of Charlotte.

**Sec. 23. Post-Retirement Adjustments.**

(a) The retirement benefits payable to a Retiree pursuant to the provisions of this act may be adjusted at the discretion of the Board of Trustees based upon the prevailing economic and funding conditions. Such adjustment shall not be paid until such adjustment is ratified by the City of Charlotte.

(b) Effective July 1, 2001, the Board of Trustees shall make an annual bonus payment in the month of January upon receipt of a fiscal note prepared by the actuary demonstrating that the Retirement System could support such payment in an actuarially sound manner. Such fiscal note, at a minimum, shall evaluate the effect that granting the bonus payment will have on the amortization period, the level of unfunded accrued liabilities, and the annual required contributions. The total amount to be distributed shall be recommended by the actuary but in all events shall not exceed the aggregate monthly benefits of the Retirees eligible for the bonus. A Retiree who has been retired for at least one year as of December 31, preceding distribution of the bonus, shall receive a bonus that is determined by the Administrator as proportional of the Retiree's monthly benefit to the aggregate monthly benefits of all Retirees eligible for the bonus.

(b1) Effective July 1, 1998, a Member who retired prior to July 1, 1989, shall receive an adjustment to the annual benefit equivalent to eight and thirty-three one hundredths percent (8.33%), which shall result in a monthly benefit of not less than nine hundred two dollars and seventy-five cents (\$902.75) per month. Effective July 1, 1998, a Member who retired pursuant to a disability retirement after July 1, 1989, shall receive an adjustment to the annual benefit equivalent to eight and thirty-three one hundredths percent (8.33%) through July 1, 1999, which shall result in a monthly benefit of not less than nine hundred two dollars and seventy-five cents (\$902.75) per month.

(c) Effective July 1, 1994, the provisions of this section shall apply to surviving beneficiaries and death benefit recipients receiving benefits from the Charlotte Firefighters' Retirement System.

**Sec. 23.1 Retiree Health Insurance Premiums.** Effective January 1, 2007, a Member who is an "eligible retired public safety officer" as defined in section 402(l)(4)(B) of the Code who retired pursuant to Section 15, Section 19, or Section 20 of this act may elect to receive a distribution from the System in an amount not to exceed the lesser of the following:

- (1) The amount paid by such Member for qualified health insurance premiums of the Member, the Member's spouse, or dependents (as defined in section 152 of the Code) for such taxable year; or
- (2) Three thousand dollars (\$3,000) for the taxable year.

Any distribution pursuant to this section shall reduce the benefit payable to the Member for the taxable year from the System. Such distribution shall be paid directly to the provider of the accident or health insurance. All distributions under this section shall be made in compliance with section 402(l) of the Code and any guidance issued thereunder.

## **TITLE V. METHOD OF FINANCING.**

**Sec. 24. Member Contributions.** Each Member shall contribute to the Charlotte Firefighters' Retirement System and the City of Charlotte shall cause to be deducted from each and every payroll of such Member, an amount equal to the Member's Compensation multiplied by 12.65%. Notwithstanding any provision of this act to the contrary, effective July 1, 1983, the City of Charlotte, as an employer, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986, as amended from time to time, may elect to pick up and pay the contributions that would be payable by the Members of the Retirement System under this section with respect to the service of the Members after June 30, 1983. The Members' contributions picked up by the City of Charlotte shall be designated for all purposes of the Retirement System as Member contributions, except for the determination of tax upon a distribution from the Retirement System. These contributions shall be credited to the fund created by this act accumulated within the fund in a Member's account that shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the City of Charlotte shall be payable from the same source of funds used for the payment of Compensation to a Member. A deduction shall be made from a Member's Compensation equal to the amount of his contributions picked up by the City of Charlotte.

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This deduction, however, shall not reduce his Compensation for purposes of the Retirement System. Picked-up contributions shall be transmitted to the Retirement System.

**Sec. 25. City of Charlotte Contributions.** (a) The City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System an amount equal to the Member's Compensation multiplied by 12.65%, for each and every payroll of such Member. (b) Should any Member of this Retirement System enter the Armed Forces of the United States of America, the City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System for each and every payroll an amount equal to the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to subsection (a) of this section for a period not to exceed the lesser of the Member's actual period of active military duty or five years. (c) Should any Member of the Retirement System enter the Armed Forces of the United States of America, upon approval by the City Council, the City of Charlotte by and on behalf of such Member may contribute an amount equal to, but not to exceed, the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to Section 24 of this act. Any contributions by and on behalf of such Member shall inure to the benefit of such Member as though made by such Member under the provisions of this act unless otherwise specified in this act. (c1) Should any Member of the Retirement System contribute an amount pursuant to Section 4 for the purpose of receiving Membership Service Credit for any period of benefits under the federal Family Medical Leave Act, the City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System an amount equal to the Compensation that Member would have earned multiplied by the contribution rate established by Section 24 of this Act. (d) In addition thereto, the City Council may, within its discretion and upon the recommendation of the Board of Trustees, appropriate funds necessary to provide a cost of living increase to the Retirees of the System.

**Sec. 26. Other.** Any other contributions by or on the behalf of any Member or the City of Charlotte pursuant to the provisions of this act, shall be received by the Charlotte Firefighters' Retirement System.

#### **TITLE VI. ADMINISTRATION BY BOARD OF TRUSTEES.**

**Sec. 27. General.** The Board of Trustees heretofore established is hereby continued. The general administration, management and responsibility for the proper operation of the Retirement System and for construing and making effective the provisions of this act are vested in the Board of Trustees.

**Sec. 28. Body Politic and Corporate.** The Board of Trustees shall be a body politic and corporate under the name of the Board of Trustees of the Charlotte Firefighters' Retirement System and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, receive, demand and possess all kinds of property hereinafter specified, and to bargain, sell, grant, transfer or dispose of all such property as it may lawfully acquire. All



such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, specifically, but not limited to, income, license, machinery, franchise and sales taxes. In addition, the Board of Trustees as a body politic and corporate may purchase and maintain such insurance policy or policies as may be necessary for the protection of the System, the System's assets, and trustees for acts performed by them as trustees, excluding malfeasance. All expenses for the purchase or maintenance of insurance shall be borne by the System.

**Sec. 29. Board of Trustees.** (a) The Board of Trustees shall consist of 11 Trustees, as follows: (i) City Manager, or some other City department head or employee as duly designated by the City Manager; (ii) City Finance Director, or a deputy finance director as duly designated by the City Finance Director; (iii) City Treasurer; (iv) a Chairman of the Board and three Trustees to represent the public and who are residents of Mecklenburg County and who are appointed by the Resident Judge of the Superior Court of Mecklenburg County and who shall hold office for a period of three years or until their successor shall have been appointed and been qualified; (v) three Members of the Retirement System, each of whom shall be elected by a vote of the Members of the Retirement System for a term of three years, pursuant to the Charlotte Firefighters' Retirement System Election Regulation; and (vi) one Retiree of the Retirement System to be elected by a majority vote of the retirees of the Retirement System for a term of three years, pursuant to the Charlotte Firefighters' Retirement System Election Regulation. The terms of office for elected Member Trustees and, effective July 1, 1989, for appointed Trustees, shall be graduated so that no more than three Trustees' terms shall expire each year. Any Member shall be eligible to succeed himself as a Trustee. (b) Conflict of Interest. No trustee, chairman, or other officer or employee of the Charlotte Firefighters' Retirement System shall directly or indirectly become an independent contractor for work done by, or on behalf of, the System, or become directly or indirectly financially interested in, or receive profits from any purchase, contract, or association by or with the System.

**Sec. 30. Election of Member Trustees.** The elections of the Member Trustees as provided for in Subsection 29(a) and the Retiree Trustee as provided for in Subsection 29(a) shall be administered in accordance with rules and regulations adopted by the Board of Trustees from time to time.

**Sec. 31. Oath of Office.** An oath of office shall be administered to the Chairman of the Board and each Trustee prior to their assumption of duties with the Board of Trustees. The oath of office shall be administered by the Mayor only after the Trustee having first qualified and within 10 days after having been appointed or elected. The Chairman of the Board and each Trustee shall swear to diligently and honestly administer the affairs of said Board and that he will not knowingly violate or willfully permit to be violated any of the provisions of the law applicable to the Retirement System. Such oath of office shall be subscribed to by the Member making it, and certified by the officer by whom it is taken, and immediately filed in the office of the City Clerk.

**Sec. 32. Vacancy on Board of Trustees.** A vacancy on the Board of Trustees shall be deemed to have occurred for any or all of the following reasons:

(a) In the event that an elected Trustee of the Board shall make application for benefits under this act he shall first submit a written notice to the Chairman of the Board

disqualifying himself from his trusteeship.

- (b) A vacancy shall be deemed to have occurred if a Trustee or the Chairman fails to attend any three consecutive meetings of the Board without prior notification unless excused for cause by the Trustees attending said meetings.
- (c) A vacancy shall be deemed to have occurred if a Trustee or the Chairman should die.
- (c1) A vacancy shall be deemed to have occurred if a Trustee or the Chairman should fail to satisfy the classification requirements in Subsection 29(a) of this act.
- (d) If a Trustee shall deem himself incapable of fulfilling his Board obligations for any reason or if any condition exists that renders the Trustee disqualified, the Trustee shall submit a written notice to the Chairman disqualifying himself from his trusteeship. If the Chairman shall deem himself to be disqualified for any of the foregoing reasons, he shall submit written notice to the Resident Judge of the Superior Court of Mecklenburg County.
- (e) If a vacancy shall occur pursuant to the provisions of subsections (a) through (d) of this section, the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired portion of the term, for the same classification and in the same manner as the position was previously filled.

**Sec. 33. Compensation of Trustees.** The members of the Board of Trustees of the Charlotte Firefighters' Retirement System shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred through service upon said Board.

**Sec. 34. Officers of System.** (a) The Chairman of the Board, named pursuant to the provisions of Subsection 29(a) of this act, shall preside at all meetings that he is in attendance.

(b) At its first regular meeting each year, the Board shall elect from its membership:  
(1) A Vice Chairman, who shall preside at any meeting that the Chairman is absent; and (2) A Secretary of the Board, who shall be responsible for the recording and certifying of the record of proceedings.

(c) The City Treasurer shall be the Treasurer of the Retirement System and shall be custodian of its assets.

**Sec. 35. Meetings.** (a) The Board of Trustees shall conduct its business at meetings that conform with the 'Open Meetings Law,' Article 33C of Chapter 143 of the General Statutes, G.S. 143-318.9 G.S. 143-318.18, as amended.

(a1) The Board of Trustees shall hold meetings regularly, at least one in each calendar quarter, and shall designate the time and place thereof. The first regular meeting in each Plan Year shall be held on the fourth Thursday of the month of July.

(b) The Chairman or, in the absence of the Chairman, the Vice Chairman may hold a special meeting and/or an emergency meeting at his discretion. Additionally, upon the

written request of two members of the Board of Trustees, the Chairman shall call a special meeting of the Board.

When a special meeting is called, the Administrator shall insure that notice is given to each trustee either in person or by first class mail to the address of record on file with the Administrator. Such notice shall include the purpose of the meeting and designate the time, date and place thereof. The Chairman or Vice Chairman shall insure that the business of the special meeting be limited to the purpose as set forth in the notice.

When an emergency meeting is called, the Administrator shall attempt to notify each Trustee by telephone to the telephone number on file with the Administrator.

(c) Each Trustee shall be entitled to one vote on each motion presented to the Board of Trustees. The Chairman shall only vote in case of a tie or in such case as to create a quorum. Six attending Trustees, including the Chairman, shall constitute a quorum at any meeting of the Board and at least six affirmative votes shall be necessary for a decision by the Trustees at any meeting of said Board. Prior to any discussion of a specific agenda item for which a Trustee or the Chairman deems himself to have a conflict of interest, or at such point during discussion that he determines himself to have a conflict of interest, the Trustee or Chairman shall thereupon make such conflict known to the Board and the Board shall inquire into the nature of the conflict and make a determination whether a conflict of interest exists and if the Trustee or Chairman participate in the discussion and vote on the agenda item.

(d) The Board of Trustees through the Secretary shall cause to be kept a record of all of its proceedings which shall be open to public inspection.

**Sec. 36. Employment of Professional Services.** (a) The Board of Trustees shall have the authority to employ and/or utilize professional and secretarial services and to purchase and maintain such property, equipment and supplies as are deemed necessary for the proper operation of the System. All expenses, fees and/or retainers for the employment of services shall be borne by the System with the singular exception of the employment of the Actuary. All fees and expenses in connection with the employment of a qualified actuary to perform the annual evaluation of the Retirement System's financial condition shall be paid by the City of Charlotte.

(a1) **Actuary.** The Board of Trustees shall annually request the City to employ a qualified Actuary to perform such studies and evaluations of the Charlotte Firefighters' Retirement System as may be necessary and/or desirable by the Board or City in connection with the administration of the System. Within the meaning of this subsection, a qualified Actuary shall be an associate or fellow of the Society of Actuaries and either a member of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries.

(b) **Medical Board.** The Board of Trustees shall appoint a Medical Board to be composed of one or more physicians to serve at the pleasure of the Board. The Medical Board shall arrange for and evaluate all medical examinations required under provisions of this act. The Medical Board shall also investigate and evaluate all medical evidence, statements, and certificates submitted by and on behalf of a Member in connection with an application for disability retirement. The Medical Board shall render its conclusions and recommendations in

writing to the Board of Trustees in accordance with the provisions of this act.

(c) **Legal Counsel.** The City attorney and staff shall be the legal advisor to the Board of Trustees. The Board may employ separate legal counsel as it deems necessary and beneficial for the operation of the System.

(d) **Auditor.** The Board of Trustees shall appoint an Auditor who shall be a certified public accountant.

(e) **Administrator.** The Board of Trustees shall have the authority to appoint an Administrator who shall be responsible for the administration and coordination of all System operations and activities that are not otherwise specified in this act. Such administration shall be in accordance with rules and regulations of this act and the policy and direction of the Board. In the absence of an Administrator, the Secretary of the Board as specified in Section 34(b)(2) shall be responsible for the coordination of Board meetings and providing proper notice of such meetings.

(f) **Insurance.** The Board of Trustees may purchase and maintain that insurance coverage necessary for the proper operation of the System, including worker's compensation, fidelity insurance, and officers' and employees' liability coverage. All expenses incurred in purchasing or maintaining this coverage, including fees, and retainers, shall be borne by the System.

**Sec. 37. Committees.** The Chairman of the Board shall appoint an Investment Committee and a Benefits Committee and shall have the authority to appoint such other committees of the Board as deemed appropriate.

**Sec. 38. Authority of Board of Trustees to Recommend Changes to the Retirement System.** The Board of Trustees shall have the authority to recommend to the City changes to the Retirement System. All recommendations for changes must be actuarially sound and must take into account the interest of all Participants in the System.

**Sec. 39. Authority of City of Charlotte to Make Changes with Respect to the Retirement System.** Upon the recommendation of the Board of Trustees as provided in Section 38 of this act, the City may, within its discretion, increase or decrease the rate of contribution of the Members of the System and the City of Charlotte as may be necessary for the proper operation of the Retirement System. Provided, however, that no change shall reduce benefits being paid to Retirees of the System. The City may deviate from the provisions of this act to the extent necessary to make any changes in the System required by the Internal Revenue Service prior to its issuing a favorable determination letter under Section 401(a) and Section 501(a) of the Internal Revenue Code of 1986, as amended from time to time, and as required by the Internal Revenue Service to maintain the qualified status of the Retirement System.

**Sec. 40. Authority of City of Charlotte to Recommend Changes to the Retirement System.** Subject to the approval of the Board of Trustees, the City may recommend to the General Assembly of the State of North Carolina changes to the Retirement System. All

recommendations for changes must be actuarially sound and must take into account the interest of all Participants in the System.

**Sec. 41. Rules and Regulations.** Consistent with the provisions of this act, the Board of Trustees shall have the authority to adopt the rules and regulations for the administration of the Retirement System and for the transaction of its business.

## **TITLE VII. RECORD-KEEPING AND REPORTING REQUIREMENTS.**

**Sec. 42. Record-Keeping.** The Administrator, or the Secretary of the Board in the absence of an administrator, shall maintain all data, files and records as is necessary to comply with the reporting requirements of this act.

**Sec. 43. Annual Audit.** There shall be an annual Audit of the books of the System. The Audit shall be performed by the Auditor as specified in Section 36(d).

**Sec. 44. Annual Actuarial Valuation.** There shall be an annual Actuarial Valuation as of the 1st of July. The Valuation shall be performed by the actuary as specified in Section 36(a1). Such Valuation shall be completed and presented to the Board no later than the second regular quarterly meeting each year.

**Sec. 45. Annual Report to City Council.** An annual report of the financial and actuarial condition of the System, as of the preceding June 30, shall be prepared and forwarded to the City Council in the quarter after receipt of the System's audit report from the Auditor. Such report shall contain but shall not be limited to the Auditor's opinion, such statements contained in the Auditor's report, a summary of the annual actuarial valuation and the actuary's valuation certification.

**Sec. 46. Annual Report to Participants.** A copy of the report required by Section 45 shall be provided to each of the fire stations and Fire Department administrative offices of the City of Charlotte. In addition, a copy of the report or portions of the report shall be provided to the Participants of the System.

**Sec. 47. Other Reports.** The Administrator, or the Secretary of the Board in the absence of an administrator, shall be responsible for insuring that all reporting requirements with the Internal Revenue Service and the United States Government, including its various other agencies, departments, and offices, are complied with.

## **TITLE VIII. CUSTODY AND INVESTMENT OF SYSTEM ASSETS.**

**Sec. 48. Trusteeship of Funds.** The Board of Trustees of the Charlotte Firefighters' Retirement System shall be the trustee of the funds and assets of the System and shall have the

power to take by gift, grant, devise or bequest any money, real or personal property or other things of value, and hold, sell or invest the same.

**Sec. 49. Custody of System Assets.** The Treasurer of the Retirement System shall be the custodian and responsible for the safekeeping of all funds paid into the Charlotte Firefighters' Retirement System. The Treasurer shall deposit said funds in a bank or banks as designated by the Board of Trustees. The Treasurer may, with Board concurrence, use one or more nominees to facilitate transfer of the System's securities and may hold the securities in safekeeping with the Federal Reserve System, a clearing corporation, or a custodian bank which is a member of the Federal Reserve System. All payments from said funds shall be authorized by the Treasurer only upon the signed, written request of the Administrator, or the Secretary of the Board in the absence of an administrator. The Treasurer shall furnish such bond as shall be required by the Board of Trustees and premium for said bond shall be paid out of the funds of the System.

**Sec. 50. Investment/Reinvestment of Funds and Assets.** The Board of Trustees shall be vested with the authority and responsibility and shall have full power to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities and investments in which the System shall have been invested, as well as the proceeds of said investments and any monies belonging to the System. The Board of Trustees as fiduciaries shall:

- (1) Discharge its duties solely in the interest of the Participants and the Beneficiaries;
- (2) Act with the same care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims;
- (3) Act with due regard for the management, reputation and stability of the issuer and the character of the particular investments being considered;
- (4) Make investments for the exclusive purpose of providing benefits to Participants and Participants' Beneficiaries;
- (5) Give appropriate consideration to those facts and circumstances the Board of Trustees knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the System's investments for which the Board of Trustees has responsibility, and shall act accordingly. Appropriate consideration shall include, but is not limited to, a determination by the Board of Trustees that a particular investment or investment course of action is reasonably designed as part of the investments of the System to further the purposes of the System taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or the investment course of action:
  - a. The diversification of the investments of the System;
  - b. The liquidity and current return of the investments of the System relative to the anticipated cash flow requirements of the System; and
  - c. The projected return of the investments of the System relative to the funding

objectives of the System;

(6) Give appropriate consideration to investments which would enhance the general welfare of the City and its citizens if those investments offer the safety and rate of return comparable to other investments held by the System and available to the Board of Trustees at the time the investment decision is made;

(7) May use a portion of income of the System to defray the cost of investing, managing and protecting the assets of the System; and

(8) May utilize the services of Investment Fiduciaries to manage the assets of the System. These Investment Fiduciaries shall be subject to the terms, conditions, and limitations provided in this section and any limitations as set forth by the Board of Trustees.

#### **TITLE IX. RESTRICTIONS.**

**Sec. 51. Restrictions.** Notwithstanding any provision of this act to the contrary:

(1) No part of the funds contributed to the Retirement System, or the income thereon, may be used for, or diverted to, purposes other than for the exclusive benefit of the Participants of the Retirement System as authorized by the provisions of this act, provided, that in the event of the termination of the Retirement System, the City shall receive any surplus funds or assets after all liabilities of the Retirement System are satisfied.

(2) Upon termination of the Retirement System or upon complete discontinuance of contributions to the Retirement System, the rights of all Participants of the Retirement System to benefits accrued to the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(3) Forfeitures under the Retirement System may not be applied to increase the benefits that any Participant would otherwise receive under the Retirement System.

(4) Notwithstanding any provision of the Retirement System to the contrary, the maximum annual benefit payable in the form of a straight life annuity from the Retirement System on behalf of a Participant, when combined with any benefits from another qualified benefit plan maintained by the City, shall not exceed the amount permitted by Section 415 of the Internal Revenue Code.

(5) Any benefit payable to a Participant pursuant to Section 4 of this act shall commence not later than the April 1 immediately following the calendar year in which the Participant attains age 70 1/2 or, if later, the April 1 immediately following the calendar year in which the Participant terminates service. Additionally, the distribution of any such benefit must satisfy the minimum distribution requirements set forth in this paragraph and must be consistent with Treasury Regulations, as of the required beginning date. The minimum distribution for a calendar year equals the Participant's nonforfeitable Accrued Benefit at the beginning of the year divided by the Participant's life expectancy or, if applicable, the joint and last survivor expectancy of the participant and his Designated Beneficiary. The

minimum distribution shall be computed by using the life expectancy multiples under Treasury Regulation 1.72-9. The minimum distribution for a calendar year subsequent to the first calendar year for which a minimum distribution is required may be computed by re-determining the applicable life expectancy. However, there shall be no re-determination of the joint life and last survivor expectancy of the Participant and a non-spouse Designated Beneficiary in a manner which takes into account any adjustment to a life expectancy other than the Participant's life expectancy. A distribution to the Participant in the form of a life annuity, joint and survivor annuity, or an annuity over a fixed period will satisfy the minimum distribution requirements of this paragraph if the method of distribution provides non-increasing payments or otherwise satisfies Treasury Regulations. If the Participant dies after the payment of his benefit has commenced, the death benefit provided by this act shall be paid over a period which does not exceed the payment period which had commenced. If a Participant dies prior to the time the payment of his benefit commences, the death benefit provided by this act shall be paid over a period not exceeding: (i) five years after the date of the Participant's death; or (ii) if the Beneficiary is a Designated Beneficiary, over the Designated Beneficiary's life or life expectancy. No payment of benefit over a period described in (ii) shall be permitted, unless the payment of such benefit to the Designated Beneficiary will commence no later than one year after the date of the Participant's death, or, if later, and the Designated Beneficiary is the Participant's surviving spouse, the date the Participant would have attained age 70 1/2. The life expectancy multiples under Treasury Regulation 1.72-9 shall be used for purposes of applying this paragraph. The life expectancy of a Participant's surviving spouse may be recalculated not more frequently than annually, but the life expectancy of a non-spouse Designated Beneficiary may not be recalculated after the commencement of payment of benefits to the Designated Beneficiary. Any amount paid to a Participant's child, which becomes payable to the Participant's surviving spouse upon the child's attaining the age of majority, shall be treated as paid to the Participant's surviving spouse for purposes of applying this paragraph.

With respect to distributions under the Act made for calendar years beginning on or after January 1, 2001, the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code will be applied in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Act to the contrary. These regulations shall be followed until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

## TITLE X. MISCELLANEOUS.

**Sec. 52. Liabilities of Trustees.** No member of the Board of Trustees shall be personally liable by reason of his service as a Trustee for any acts performed by him as a Trustee, except for malfeasance in office. Except for costs or expenses incurred because of Trustee malfeasance, the System shall indemnify each Trustee for any and all costs or expenses incurred by that Trustee as a result of acts performed as a Trustee, including all insurance deductibles, copayments, and amounts exceeding insurance policy limits.



**Sec. 53. Assignments Prohibited.** The right of a Member to any benefits payable or reimbursement of any contributions, and any other right accrued or accruing to any person pursuant to the provisions of this act, and any monies belonging to the Retirement System shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, and shall be unassignable except as is specifically authorized by statute. If a Member is covered under a group insurance or prepayment plan participated in by the City, and should he be permitted to, and elect to, continue such coverage as a Retiree, he may authorize the Board of Trustees to have deducted from his monthly retirement benefits the payments required of him to continue coverage under such group insurance or prepayment plan.

**Sec. 54. Errors.** Should any change in the records result in any person receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the Board of Trustees shall correct such error, and as far as practicable shall adjust the payment in such manner that the Actuarial Equivalent of the benefit to which the said person was correctly entitled shall be paid.

**Sec. 55. Protection Against Fraud.** Whoever with intent to deceive shall make any statements and/or reports required under this act which are untrue, or shall falsify or permit to be falsified any records of the Retirement System, or who shall otherwise violate, with intent to deceive, any of the provisions of this act, shall be prosecuted to the fullest extent of the law.

The Charlotte Firefighters' Retirement System shall have the right of setoff for any claim arising from embezzlement or by fraud of a Participant.

**Sec. 56.** Repealed by Section 17 of Chapter 248 of the 1989 Session Laws.

**Sec. 57. Laws Inconsistent Repealed.** All laws and clauses of law pertaining to the Charlotte Firefighters' Retirement System that are in conflict with the provisions of this act are hereby revoked.

**Sec. 58. Savings Provisions.** If any section or part of this act is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of the remaining sections of this act or the act in its entirety; it being the legislative intent that this act shall stand notwithstanding the invalidity of any section or part of a section.

**Sec. 59.** This act shall apply to the City of Charlotte only.

Deleted:

The General Assembly of North Carolina enacts:

Section 1. Section 21 of Chapter 926 of the 1947 Session Laws, as amended by Chapter 506 of the 1987 Session Laws, as amended by Chapter 1033 of the 1987 Session Laws, as amended by Chapter 248 of the 1989 Session Laws, as amended by Chapter 830 of the 1991 Session Laws, as amended by Chapter 640 of the 1993 Session Laws; as amended by Chapter 171 of the 1995 Sessions Law; s.l. 1999-100, s.l. 2001-22; s.l. 2002-43; s.l. 2006-117; s.l. 2015-42; s.l. 2017-71

Section 2. None of the provisions of this act shall create an additional liability for the Charlotte Firefighters' Retirement System unless sufficient assets are available to pay for the liability.

Section 3. This act becomes effective July 1, 2017.

s/ Dan Forest

President of the Senate

s/ Tim Moore

Speaker of the House of Representatives