

September 1, 2011

**AUSTIN POLICE RETIREMENT
SYSTEM ACT**

September 1, 2011

Article 6243n-1 of the State of
Texas Government Code

This Act and three other amendments have been prepared for the Austin Police Retirement System. If there are any differences between this and Vernon's Annotated Texas Civil Statutes or Texas Government Code, then the applicable Texas law will be the operative law.

TABLE OF CONTENTS

<u>Section</u>	<u>Page No.</u>
Article 6243n-1. Police Officers Retirement System in Municipalities of 750,000 to 850,000	1
 ARTICLE I 	
1.01 Applicability.....	1
1.02 Definitions.....	1
 ARTICLE II 	
2.01 Establishment and Applicability	8
2.02 Successor.....	8
2.03 Purpose.....	8
 ARTICLE III 	
3.01 Administration	9
3.02 Composition of Board	9
3.03 Police Officer and Retired Members of Board.....	10
3.04 Oath; Compensation	12
3.05 Chair; Vice-Chair.....	12
3.06 Rules, Quorum, Removal	12
3.07 Board Records.....	13
3.08 Administration of Police Retirement System	13
3.09 Actuary; Duties	14
3.10 Investment Managers.....	14
3.11 Investment Consultant	15
3.12 Legal Counsel	15
3.13 Reimbursement of Legal Expenses of Board Member or Employee of System.....	15
3.14 Confidentiality of Information about Members, Retirees, Annuitants, or Beneficiaries	16
 ARTICLE IV 	
4.01 Membership	18
 ARTICLE V 	
5.01 Creditable Service.....	24
5.02 Military Service Credit	24
5.03 Probationary Service Credit	27
5.04 Cadet Service Credit.....	28
5.05 Permissive Service Credit.....	31

ARTICLE VI

6.01 Service Retirement Benefits and Increases in Benefits..... 35
6.02 Eligibility for Service Retirement 40
6.03 Annuity Options..... 41
6.04 Termination Prior to Retirement; Treatment of Accumulated Deposits 43
6.05 Death of a Member; Treatment of Accumulated Deposits 44
6.06 Selecting Options, Designating Beneficiaries 45
6.07 Retroactive Deferred Retirement Option Plan..... 47
6.08 Retiree Death Benefit Fund..... 51

ARTICLE VII

7.01 Disability Retirement..... 54
7.02 Computation of Disability Benefit 56
7.03 Disability Benefit Reports 57

ARTICLE VIII

8.01 Method of Financing 61

ARTICLE IX

9.01 Investments of the Board..... 66

ARTICLE X

10.01 False Report or Statement 69
10.02 Correction of Errors 69

ARTICLE XI

11.01 Limitation on Payment of Benefits 70

ARTICLE XII

12.01 Distribution Rules for Service Retirement and Death Annuity Payments 72
12.02 Distribution Rules for Disability Annuity Payments 74

ARTICLE XIII

13.01 Transfer of Eligible Rollover Distributions 77
13.02 Mandatory Distributions Prohibited..... 79

APPENDIX A

Three Other 2007 Amendments to Texas State Law Affecting the Austin Police Retirement System

1. Act Relating to Participation in Proportionate Retirement ProgramA-1
2. Act Relating to Audits of Actuarial Valuations, Studies and Reports of Austin
Police Retirement System and Certain Other Public Retirement Systems by
Actuary Retained by City of Austin.....A-2
3. Act Relating to Correcting Errors in the Distribution of Benefits by a Public
Retirement System.....A-6

**Article 6243 n-1. Police Officers Retirement System in Municipalities of
750,000 to 850,000**

ARTICLE I

SECTION 1.01. APPLICABILITY AND DEFINITIONS. This Act applies only to a municipality having a population of more than 600,000 and less than 700,000, according to the most recent federal census.

SECTION 1.02. DEFINITIONS. The following words and phrases have the meanings assigned by this section unless a different meaning is plainly required by the context:

(1) "Accumulated deposits" means the amount standing to the credit of a member derived from the deposits required to be made by the member to the police retirement system or to the predecessor system. Accumulated deposits also include interest that is credited annually to the account of a vested member at a rate of five percent or the rate determined by the board and that is credited as of December 31 to amounts standing to the credit of the member on January 1 of the same calendar year. Accumulated deposits also include interest credited to the account of a member before September 1, 2007, without regard to whether the member is vested at the time the interest is credited to the member's account.

(2) "Actuarial equivalent" means any benefit of equal present value to a standard benefit when computed as specified by this Act.

(3) "Actuary" means a technical advisor of the police retirement board regarding the operations which are based on mortality, service, and compensation experience who makes periodic valuations of the assets and liabilities of the funds and other evaluations as requested by the board.

(4) "Average final compensation" means the monthly average of basic hourly earnings of a member during, as applicable:

(A) if the member has 120 months or more of service during which the member made contributions to the system or the predecessor system, the 36 months which yielded the highest average during the last 120 months of membership service during which the member contributed to the system or the predecessor system;

(B) if the member has less than 120 months of membership service during which the member contributed to the system or the predecessor system, but has at least 36 months of membership service during which the member made contributions to the system or the predecessor system, the average of the 36 months which yielded the highest average; or

(C) if the member does not have 36 months of membership service during which the member contributed to the system or the predecessor system, the average of the member's months of membership service during which the member made contributions to the system or the predecessor system.

(5) "Basic hourly earnings" means the hourly rate of the sum of base pay plus longevity pay but does not include any other type of pay.

(6) "Beneficiary" means any person, trust, or estate properly designated by a member or retired member to receive benefits from the system.

(7) "Creditable service" means the number of months during which a member pays into and keeps on deposit the amounts of money prescribed by this Act to be paid by the member into the system or into the predecessor system, including certain military service and certain probationary service in excess of six months for which a member has purchased creditable service in accordance with Article V of this Act, and excluding a month in which service amounted to fewer than 15 days. The months beyond attained age 62 are included within the meaning of creditable service, regardless of payments into this system or into the predecessor system if the police officer is otherwise eligible for membership in the system, is a police officer employed by the city, and did not contribute for the months only if they occurred before September 1, 1995.

(8) "Death benefit" means a single sum payable as a result of the death of a member or retired member.

(9) "Deposits" means the amount required to be paid by members in accordance with the provisions of this Act.

(10) "Disability retirement" means the employment termination of a member from service with a disability retirement benefit as provided under this Act.

(11) "Employment termination" means:

(A) the voluntary termination of employment with the city or the system; or

(B) the involuntary termination of employment with the city or the system of a member who does not appeal the termination through arbitration or through the civil service commission or whose appeal has been denied by arbitration or by the civil service commission.

(12) "Fund No. 1" means the part of the trust assets consisting of all accumulated deposits of members who have not withdrawn from the system.

(13) "Fund No. 2" means the part of the trust assets consisting of all money contributed by the city, interest earned thereon, and all accumulations and earnings of the system except those of Fund No. 1.

(14) "Investment consultant" means a person who monitors the investment performance of the system and provides other services as requested by the board.

(15) "Investment manager" means a person or persons who monitor and manage any portion of the investment portfolio for the system making specified investment decisions on behalf of the system.

(16) "Life annuity," "retirement annuity," or "annuity" means a series of equal monthly payments, payable for life after retirement.

(17) "Life annuity (modified cash refund)" means a series of equal monthly payments, payable for life after retirement. In the event of death of the retired member before

that member has received monthly payments equal to the amount of that member's accumulated deposits at the date of retirement, the excess, if any, of such accumulated deposits over the monthly payments shall be refunded in one sum to the member's beneficiary.

(18) "Member" means any police officer or employee of the police retirement system included in the system under this Act and approved for membership by the police retirement board. In any case of doubt regarding the eligibility of an employee to become or remain a member of the system, the decision of the police retirement board shall be final.

(19) "Normal retirement date" means the last day of the earliest month in which the member has satisfied the eligibility requirements of Section 6.02 of this Act.

(20) "Predecessor system" means the retirement system for police officers in effect before January 1, 1980.

(21) "Police officer" means any full-time commissioned police officer employed by the police department of the city pursuant to Chapter 143, Local Government Code.

(22) "Police retirement board" or "board" means the board of trustees of the police retirement system created by Section 3.01 of this Act for the purpose of administering the system.

(23) "Police retirement system" or "system" means a retirement and pensioning system for police officers of certain cities and for employees of the system established by Section 2.01 of this Act.

(24) "Retired member" means a member who is receiving a service or disability retirement benefit.

(25) "Retirement" means employment termination in order to receive an annuity in accordance with the provisions of the police retirement system under this Act.

(26) "Retirement date" means the last day of the month of the retirement of the member.

(27) "Service" or "active service" means service as a police officer of the city paid for by the city or service as a member of the police retirement system's administrative staff paid for by the system.

(28) "Spouse" means a spouse as recognized under the laws of this state.

(29) "Survivor benefit" means a series of equal monthly payments payable as a result of the death of a member after becoming eligible for service retirement but before retirement and computed as if the member had retired on the last day of the month of death.

(30) "Vested" means a member has a right to leave the member's accumulated deposits standing to the member's credit with the system and receive a service retirement benefit on attaining the age at which service retirement benefits become payable. A member is vested on attaining 10 years of creditable service.

(31) "Vested interest" means the amount of benefit to which a member has a nonforfeitable right in accordance with the provisions of this Act.

(32) "Withdrawal" means employment termination for any cause whatsoever prior to retirement date and the subsequent receipt or direct rollover of the accumulated deposits standing to the member's credit in the police retirement system.

(33) "Withdrawal benefit" means the accumulated deposits of a member on withdrawal which have been made in one lump sum unless specifically provided otherwise in this Act.

ARTICLE II

SECTION 2.01. ESTABLISHMENT AND APPLICABILITY. The retirement system for police officers of the city and the trust forming a part of that system are hereby established on the passage of this Act by the Legislature of the State of Texas. The police retirement system and the related trust are placed under the management of the police retirement board for the purpose of providing certain benefits on retirement for police officers, as defined in this Act.

SECTION 2.02. SUCCESSOR. This system is the successor system to the one applicable to police officers immediately prior to the effective date of this Act.

SECTION 2.03. PURPOSE. It is the express purpose of this Act to have no duplication of benefits provided by the police retirement system and the retirement system for other employees of the city for a common period of service to the city. Any change in employment status which results in transferring membership between the police retirement system and the retirement system for other employees of the city shall be handled in a policy determined to be satisfactory by the police retirement board and by the board for the retirement system for other employees of the city. Such policy may include the transfer of member service and appropriate transfer of Fund No. 1 and Fund No. 2 assets as determined by the retirement boards.

ARTICLE III

SECTION 3.01. ADMINISTRATION. There is hereby created a police retirement board of the police retirement system, in which is hereby invested the general administration, management, and responsibility for the proper and effective operation of the police retirement system. The board shall be organized immediately after its members have qualified and taken the oath of office. All members of the board on January 1, 1991, shall become members of the board on the effective date of this Act and continue to serve for the remainder of the terms of office in effect on the day prior to the effective date of this Act.

SECTION 3.02. COMPOSITION OF BOARD.

(a) The police retirement board shall be composed of 11 members as follows:

- (1) one council member designated by the city council;
- (2) the city manager or the city manager's designee;
- (3) the director of finance or the director's designee;
- (4) five police officer members elected by the police officer members of the system, each of whom serves for a term of four years;
- (5) one legally qualified voter of the city, resident for the preceding five years, to be appointed by the police retirement board to serve for a term of four years and until the member's successor is duly selected and qualified; and

(6) two retired members to be elected by the retired members to serve for a term of four years, with the term of one member expiring each odd-numbered year.

(b) The terms of two members elected as described by Subsection (a)(4) of this section expire in 2001 and every fourth subsequent year, and the terms of three members elected as described by Subsection (a)(4) of this section expire in 2003 and every fourth subsequent year.

(c) A vacancy occurring by the death, resignation, or removal of the member appointed under Subsection (a)(5) of this section shall be filled by appointment by the remaining members of the police retirement board.

SECTION 3.03. POLICE OFFICER AND RETIRED MEMBERS OF BOARD.

(a) The police officer members of the board shall be elected and shall serve in accordance with Subsections (b) - (e) of this section.

(b) Any police officer member is eligible to run in the election for a position on the board.

(c) Members shall serve during the term for which they are elected and until their successors are elected and qualified, unless they are removed or their active service as police officers with the city is terminated for any reason other than service retirement. If a police officer member should elect service retirement under Article VI of this Act while serving the term for which the member is elected, the member shall continue to serve for the remainder of the term.

(d) A vacancy occurring by reason of removal, resignation, death, or any other reason shall be filled for the remainder of the term by a police officer member appointed by the remaining members of the police retirement board.

(e) Elections for police officer members shall be held on the first payday in December of each odd-numbered year. The police officers receiving the highest number of votes are elected.

In case of a tie vote, selection shall be by lot.

(f) The retired members of the board shall be elected and shall serve in accordance with Subsections (g) - (j) of this section.

(g) Any retired member is eligible to run in the election for a position on the board.

(h) Retired members shall serve during the term for which they are elected and until their successors are elected and qualified.

(i) A vacancy occurring by reason of removal, resignation, or death shall be filled for the remainder of the term by a retired member appointed by the vote of a majority of the remaining members of the police retirement board.

(j) An election for retired members shall be held during the first week in December of each odd-numbered year. The retired member receiving the highest number of votes in an election is elected. In case of a tie vote, selection shall be by lot.

(k) The police retirement board shall approve written procedures for the conduct of all elections under this Act and shall certify and announce the results of each election.

SECTION 3.04. OATH; COMPENSATION. (a) At the first regularly scheduled police retirement board meeting after appointment and election, each member of the police retirement board shall take an oath of office that, so far as it devolves upon him, the member will diligently and honestly administer the affairs of the police retirement system and that the member will not knowingly violate or willingly permit to be violated any of the provisions of this Act applicable to the police retirement system.

(b) All members of the board shall serve without compensation.

SECTION 3.05. CHAIR; VICE-CHAIR. (a) The board shall elect from its membership a chair and a vice-chair to serve two years.

(b) The board shall appoint a pension officer. The pension officer shall appoint other necessary staff members with approval of the board. The pension officer, acting under the direction of the board, shall keep all of the records of the police retirement system and a record of the proceedings of the board. The pension officer and other employees of the system shall receive such compensation as the board may fix in each annual budget or amendments thereto.

SECTION 3.06. RULES; QUORUM; REMOVAL. (a) Subject to the limitations of this Act, the police retirement board shall from time to time establish rules and regulations for the administration of the police retirement system authorized to be created by this Act and for the transaction of the board's business.

(b) Each member of the board shall be entitled to one vote. Six members shall constitute a quorum. A majority vote of members attending a meeting shall be necessary for a decision of the board.

(c) Any member who is absent from five consecutive board meetings shall be removed from the board, and the member shall be replaced in accordance with Section 3.02 of this Act.

SECTION 3.07. BOARD RECORDS. The board shall keep or cause to be kept in convenient form data necessary for actuarial valuation of various funds of the police retirement system and for checking the experience of the system. The board shall keep a record of all its proceedings, which shall be open to public inspection, and shall publish annually a report showing the fiscal transactions of the police retirement system for the preceding year and the amount of its accumulated cash and securities as disclosed by the most recent actuarial valuation of assets and liabilities.

SECTION 3.08. ADMINISTRATION OF POLICE RETIREMENT SYSTEM.

(a) The board shall have charge of and administer the police retirement system and shall order payments therefrom under the provisions of this Act.

(b) The board shall obtain from the city all records necessary to administer the system. Individual accounts shall be maintained with each member of the police retirement system, showing the amount of the member's accumulated deposits as provided under the system. Annually a statement shall be given each member showing the total accumulation of the member's credit.

(c) The board shall engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the accounts of the board and the police retirement system at least annually.

SECTION 3.09. ACTUARY; DUTIES. (a) The police retirement board shall designate an actuary that shall be the technical advisor to the board regarding the funds authorized by provisions of this Act and shall perform such other duties as may be required in connection therewith. As soon as practicable after the establishment of the police retirement system, the actuary shall recommend for adoption by the board tables and rates required by the system. The board shall adopt the tables and rates and as soon as practicable thereafter the actuary shall make a valuation, based on the tables and rates, of the assets and liabilities of the system.

(b) From time to time on the advice of the actuary and at the direction of the board, the actuary shall make an actuarial investigation of the mortality, service, and compensation experience of members, retired members, and beneficiaries of the system and shall recommend for adoption by the board the tables and rates required by the system. The board shall adopt the tables and rates to be used by the system.

(c) The actuary shall make valuations of the assets and liabilities of the system based on tables and rates adopted by the board at least every two years.

SECTION 3.10. INVESTMENT MANAGERS. The police retirement board may hire an investment manager or investment managers who

shall have full authority to invest the assets and manage any portion of the portfolio of the system, as specified by the manager's employment contract.

SECTION 3.11. INVESTMENT CONSULTANT. The board may hire an investment consultant to monitor the investment performance of the system's investment manager or managers and provide other investment advice requested by the board.

SECTION 3.12. LEGAL COUNSEL. The board may retain legal counsel to advise, assist, or represent the board in any legal matters affecting the operation of the system. The board may litigate all matters for and on behalf of the police retirement system.

SECTION 3.13. REIMBURSEMENT OF LEGAL EXPENSES OF BOARD MEMBER OR EMPLOYEE OF SYSTEM. (a) The board may

(1) reimburse a board member or an employee of the police retirement system for liability imposed as damages because of an alleged act, error, or omission committed in the person's capacity as a fiduciary or co-fiduciary of assets of the system or as an employee of the system and for costs and expenses incurred by the person in defense of a claim of an alleged act, error, or omission; or

(2) purchase from an insurer authorized to engage in business in this state one or more insurance policies that provide for that reimbursement.

(b) The board may not provide reimbursement under this section, and may not purchase an insurance policy under this section that would provide reimbursement, of a board member or

employee of the police retirement system for liability imposed or expenses incurred because of the person's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently.

(c) The cost of reimbursement or an insurance policy purchased under this section shall be paid from the assets of the police retirement system.

SECTION 3.14. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS, RETIREES, ANNUITANTS, OR BENEFICIARIES. (a) Information contained in records that are in the custody of the police retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101, Government Code, and may not be disclosed in a form identifiable with a specific individual unless

(1) the information is disclosed to

(A) the individual or the individual's attorney, guardian, executor, administrator, or conservator, or another person who the administrator of the police retirement system determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after the administrator of the police retirement system determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the police retirement system;

(C) a governmental official or employee after the administrator of the police retirement system determines that

disclosure of the requested information is reasonably necessary to the performance of the duties of the official or employee; or

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

(2) the information is disclosed pursuant to a subpoena and the administrator of the police retirement system determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the police retirement system.

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

(d) If a disclosure under Subsection (a) is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization for the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

ARTICLE IV

SECTION 4.01. MEMBERSHIP. (a) Any person who is a police officer of the city on the date the police retirement system becomes effective and was a member of the predecessor system on December 31, 1979, shall become a member as a condition of employment.

(b) Any person who is a police officer of the city on the date the police retirement system becomes effective but was not a member of the predecessor system, if eligible for membership, shall become a member as a condition of employment and shall make the required deposits commencing with the first pay period following a probationary period of six continuous months from date of employment or eligibility, if later.

(c) Any person who becomes an employee of the city or the system, if eligible for membership, shall become a member as a condition of employment and shall make the required deposits commencing with the first pay period following a probationary period of six continuous months from date of employment or eligibility, if later.

(d) Police officers of the city and employees of the system may not become members of the police retirement system if they are part-time police officers or employees of the system who are expected to work less than a normal work week or if they are seasonal or temporary police officers or employees of the system.

A full-time police officer of the city or employee of the system eligible for membership in the system is one whose position is

classified in the annual budget, who is expected to be employed throughout the full calendar year, and whose employment is expected to continue from year to year.

(e)(1) Membership in the police retirement system shall consist of the following groups:

(A) Active--Contributory: the member who is in a status which allows payroll contributions to the police retirement system (working a normal work week, holding a full-time position, and having completed a continuous period of six months of service initially, to attain membership).

(B) Active--Noncontributory: the member whose current employment status does not allow contributions to the system (working less than a normal work week or on a leave of absence under Subsection (f)(6)(A) of this section) and on return to working a normal work week, the member will again be given creditable service, with contributions resumed at time of status change.

(C) Inactive--Contributory: the member who is on a uniformed service leave of absence under Subsection (f)(6)(B) of this section, who is allowed to make deposits to the system during the member's absence.

(D) Vested--Noncontributory: the terminated member who, being vested, leaves the member's accumulated deposits in the system.

(E) Retired: the member who is receiving a service or disability retirement annuity.

(2) It shall be the duty of the police retirement board to determine the membership group to which each police officer or employee of the system who becomes a member of the police retirement system properly belongs.

(f)(1) A member shall cease to be a member of the police retirement system and shall forfeit creditable service if, after employment termination through dismissal, resignation, or from any other cause, the member shall withdraw the member's accumulated deposits as provided under the withdrawal benefit provisions of this Act; provided, however, that any eligible member who has not previously received credit for one-half of the member's previously forfeited creditable service shall be entitled to reinstatement of previously forfeited creditable service if such eligible member or eligible surviving spouse shall have deposited in the system the accumulated deposits withdrawn and an interest charge based on the amount withdrawn times an interest factor. The interest factor is eight percent per year for the period that begins with the beginning of the month and year in which the member withdrew the member's accumulated deposits and ends with the beginning of the month and year payment is made to the system to reinstate the service.

(2) For purposes of this subsection, an eligible member is a police officer who has been reemployed by the city or a system employee who has been reemployed by the system, has completed at least 24 consecutive months of service as a member since the member was reemployed, and is not separated from active service. For purposes of this subsection, an eligible surviving

spouse is the surviving spouse of a member who was an eligible member immediately before the time of death if the member dies before making payment to the system of the amount required by this subsection.

(3) In order to be eligible to reinstate previously forfeited creditable service, an eligible member or eligible surviving spouse must deposit the amount described in Subdivision (1) of this subsection as a lump sum in the system. An eligible surviving spouse may reinstate previously forfeited creditable service not later than the date that is six months after the date of the member's death and only if the lump-sum death benefit described by Section 6.05(a) or 6.06(a)(3) of this Act is not paid.

(4) Any such member who has previously received credit for one-half of previously forfeited creditable service shall be entitled to reinstate the remaining one-half of the member's previously forfeited creditable service by payment of one-half of the amount previously withdrawn and an interest charge as described in Subdivision (1) of this subsection.

(5) The method of determining the amount of the required payment described by Subdivision (1) of this subsection may be changed if:

(A) the effect of the change is disclosed by the board's actuary;

(B) the change is adopted by the board as a board rule; and

(C) the change applies to all payments for reinstating previously forfeited creditable service under this subsection made to the system after the effective date of the change.

(6)(A) A member granted a leave of absence or withdrawing from service for a stated period of time, not to exceed two years, who allows the member's accumulated deposits to the police retirement system to remain in the system, shall be eligible for continued membership on being reemployed by the city as a police officer or by the system as an employee of the system. During that period the employee shall not receive creditable service.

(B) Uniformed service leave of absence shall not be included in the two-year period if the member returns to active service with the city as a police officer or with the system as an employee of the system within 90 days after the expiration of the uniformed service leave of absence. A member of the system on uniformed service leave of absence may make deposits to the system during the leave of absence, in an amount each biweekly pay period that is equal to the amount of the member's deposit for the last complete biweekly pay period that the member was paid by the city or the system. If a member on a uniformed service leave of absence makes biweekly deposits during the leave of absence, the employer shall make a contribution to the system for the member each biweekly pay period in an amount the employer would have made if the member's biweekly pay had continued to be the biweekly pay the member received for the last complete biweekly pay period that

the member was paid by the employer. If the member does not make deposits during a uniformed service leave of absence, the member may make payment within five years after the member has returned to the employment of the city or the system, equal to the deposits the member would have made if the member had continued to be paid by the city or the system during the member's leave of absence at the same rate of pay the member was receiving at the time the member's leave of absence began. The payment may be a single payment or may be in installments as long as each individual installment is not less than 20 percent of the total amount to be paid. A member who otherwise would be eligible to make payment under this subdivision but who has not made payment and for whom it has been more than five years since the member returned to the employment of the city may make payment during the period beginning October 1, 1995, and ending September 30, 1996. If a member makes payment of the deposits after returning to the employment of the city or the system, the employer will make a single contribution for the member equal to the deposits it would have made on the member's behalf if the member had made deposits to the system during the period of the member's leave.

(g) Repealed by Acts 1995, 74th Leg., ch. 40, § 18, eff. Sept. 1, 1995.

ARTICLE V

SECTION 5.01. CREDITABLE SERVICE. (a) The board shall determine by appropriate rules and regulations, subject to the provisions of this Act, in case of a member's absence, illness, or other temporary separation from service, the portion of each calendar year to be allowed as creditable service.

(b) No credit shall be allowed as service for any period exceeding one month during which a member was absent continuously without pay, except as provided in Subsection (f) of Section 4.01 of this Act, with respect to uniformed service leave of absence; as provided in Section 5.02 of this Act, with respect to military service performed prior to system membership; or as provided in Section 5.03 of this Act, with respect to probationary service in excess of six months.

(c) The board shall verify the records for service claims filed by the members of the police retirement system, in accordance with such administrative rules and regulations as the board may from time to time adopt.

SECTION 5.02. MILITARY SERVICE CREDIT. (a) An eligible member or eligible surviving spouse may establish creditable service for military service performed as provided under this section according to the following conditions, limitations, and restrictions:

(1) Military service creditable in the system is active federal duty service in the Armed Forces of the United States, other than as a student at a service academy, as a member

of the reserves, or any continuous active military service lasting less than 90 days, and such military service must have been performed prior to becoming a member of the police retirement system or its predecessor system.

(2) For purposes of this section, an eligible member must:

(A) have been released from military duty under conditions not dishonorable; and

(B) be a police officer employed by the city or an employee of the system who is not separated from active service.

(3) An eligible member or eligible surviving spouse may not establish more than 24 months of creditable service in the system for military service.

(4) An eligible member or eligible surviving spouse may establish creditable service under this section by contributing to the system a single payment equal to 25 percent of the estimated cost of the additional projected retirement benefits the member or surviving spouse will be entitled to receive. The system will determine the required contribution based on a procedure recommended by the actuary and approved by the board.

(5) After the eligible member or eligible surviving spouse makes the deposit required by this section, the system shall grant the member one month of creditable service for each month of military service established by this section.

(6) For purposes of this section, an eligible surviving spouse is the surviving spouse of a member who was an eligible member immediately before the time of death if the member dies

before making payment to the system of the amount required by this section. An eligible surviving spouse may establish creditable service for military service not later than the date that is six months after the date of the member's death and only if the lump-sum death benefit described by Section 6.05(a) or 6.06(a)(3) of this Act is not paid.

(b) The percent used to calculate the amount of the required payment described by Subsection (a)(4) of this section may be changed if:

(1) the effect of the change is disclosed by the board's actuary;

(2) the change is adopted by the board as a board rule;
and

(3) the change applies to all payments for establishing creditable service under this section made to the system after the effective date of the change.

(c) A member may not receive credit under this section for military service for which the person is receiving or is eligible to receive federal retirement payments based on 20 years or more of active military service or its equivalent by the member or for which the member has received credit in any other public retirement system or program established under the laws of this state.

(d) The police retirement board may by rule establish additional requirements that a person must meet in order to receive credit under this section.

(e) The police retirement board may by rule provide that no person may receive credit under this section after a date set forth in that rule.

SECTION 5.03. PROBATIONARY SERVICE CREDIT. (a) An eligible member or eligible surviving spouse may establish creditable service for probationary service performed as provided under this section according to the following conditions, limitations, and restrictions:

(1) Probationary service creditable in the system is any probationary service following commission date for which the member does not have creditable service.

(2) An eligible member or eligible surviving spouse may establish creditable service under this section by contributing to the system a single payment equal to the contribution the member would have made to the system for that service at the time the service was performed and an interest charge based on the contribution amount to be repaid times an interest factor. The interest factor is eight percent per year for the period that begins with the beginning of the month and year at the end of the probationary period for which creditable service is being established to the beginning of the month and year payment is made to the system for the purpose of establishing said service.

(3) After the eligible member or eligible surviving spouse makes the deposit required by Subdivision (2) of this subsection, the system shall grant the member one month of

creditable service for each month of probationary service established under this section.

(b) For purposes of this section, an eligible member is a police officer employed by the city who is not separated from active service.

(c) For purposes of this section, an eligible surviving spouse is the surviving spouse of a member who was an eligible member immediately before the time of death if the member dies before making payment to the system of the amount required by this section. An eligible surviving spouse may establish creditable service for probationary service not later than the date that is six months after the date of the member's death and only if the lump-sum death benefit described by Section 6.05(a) or 6.06(a)(3) of this Act is not paid.

(d) The method of determining the amount of the required payment described by Subsection (a)(2) of this section may be changed if:

(1) the effect of the change is disclosed by the board's actuary;

(2) the change is adopted by the board as a board rule;
and

(3) the change applies to all payments for establishing creditable service under this section made to the system after the effective date of the change.

SECTION 5.04. CADET SERVICE CREDIT. (a) This section does not take effect unless the city council authorizes the city to begin making contributions to the police retirement system in

accordance with Section 8.01(a) of this Act for police cadets during their employment as cadets while members of a cadet class.

Police cadets whose cadet class begins after the city council makes the authorization shall make deposits to the police retirement system in accordance with Section 8.01(a) of this Act, and those cadets shall be members of the police retirement system and shall receive creditable service for employment as cadets while members of a cadet class, notwithstanding Sections 1.02(7), (18), and (21) of this Act.

(b) Subsections (c), (d), (e), and (f) of this section take effect on the date on which when the changes made by those subsections are approved by the board's actuary. The effective date of those subsections may not be before the date the city council makes the irrevocable authorization described by Subsection (a) of this section.

(c) An eligible member or eligible surviving spouse may establish creditable service for cadet service performed as provided under this section according to the following conditions, limitations, and restrictions:

(1) Cadet service creditable in the system is any service while a member of a cadet class for which the member does not have creditable service.

(2) An eligible member or eligible surviving spouse may establish creditable service under this section by contributing to the system a single payment equal to the contribution the member would have made to the system for that service at the time the service was performed and an interest charge based on the

contribution amount to be repaid times an interest factor. The interest factor is eight percent per year for the period that begins with the beginning of the month and year at the end of the cadet class for which creditable service is being established and ends with the beginning of the month and year payment is made to the system for the purpose of establishing said service.

(3) After the eligible member or eligible surviving spouse makes the deposit required by Subsection (c)(2) of this section, the system shall grant the member one month of creditable service for each month of cadet service established under this section.

(d) For purposes of Subsection (c) of this section, an eligible member is a police officer employed by the city who is not separated from active service.

(e) For purposes of Subsection (c) of this section, an eligible surviving spouse is the surviving spouse of a member who was an eligible member immediately before the time of death if the member dies before making payment to the system of the amount required by this section. An eligible surviving spouse may establish creditable service for cadet service not later than the date that is six months after the date of the member's death and only if the lump-sum death benefit described by Section 6.05(a) or 6.06(a)(3) of this Act is not paid.

(f) The method of determining the amount of the required payment described by Subsection (c)(2) of this section may be changed if:

(1) the effect of the change is disclosed by the board's actuary;

(2) the change is adopted by the board as a board rule;
and

(3) the change applies to all payments for establishing creditable service under this section made to the system after the effective date of the change.

SECTION 5.05. PERMISSIVE SERVICE CREDIT. (a) The police retirement board may by rule provide that a member or eligible surviving spouse of a member, or a deceased member's designated beneficiary if there is no surviving spouse, may establish creditable service by depositing with the retirement system the actuarial present value, at the time of deposit, of the additional life annuity (modified cash refund) defined in Section 6.01 of this Act that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees. The police retirement board may also by rule provide that a member or eligible surviving spouse of a member, or a deceased member's designated beneficiary if there is no surviving spouse, may establish creditable service by depositing with the retirement system the actuarial present value, at the time of deposit, of the additional deferred life annuity (modified cash refund) that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees. As used in this section, a "deferred life annuity

(modified cash refund)" means a series of equal monthly payments, payable for life after an inactive member's deferred retirement date, which is on or before the last day of the month in which the inactive member would have satisfied the eligibility requirements of Section 6.02 of this Act if the member had continued as an active-contributory member, excluding any permissive service credit established under this section and excluding any military service credit established under Section 5.02 of this Act.

(b) Prior to allowing the purchase of service credit under this section, the police retirement board shall adopt rules relating to the maximum amount of credit which may be purchased by a person under this section, the eligibility requirements that a person must satisfy before purchasing credit under this section, and such other matters as the board considers necessary for the administration of this section.

(c) The board may not adopt a rule authorizing the purchase of credit under this section unless the board has obtained an actuarial study indicating that adoption of the rule will not cause the amortization period for the retirement system's unfunded actuarial accrued liability to exceed the maximum amortization period adopted by the Governmental Accounting Standards Board.

(d) The board may not adopt a rule authorizing the purchase of credit under this section if that rule would be inconsistent with the requirements of the Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.) and its successors.

(e) The board may modify or repeal a rule adopted under this section. A modification of a rule adopted under this section must comply with the requirements of this section.

(f)(1) At the time a member establishes creditable service for a deferred retirement date under this section, the member may file with the board the member's written statement either selecting one of the optional benefits authorized by this Act and designating the beneficiary of the option if one is selected or stating that the member has been afforded an opportunity to select an option but does not desire to do so. An option selection becomes effective at the member's date of deferred retirement. The member retains the right to make a final selection until the date of deferred retirement. The final selection is binding on all parties.

(2) If the member dies before the date of deferred retirement but after filing the written statement selecting one of the optional benefits, the member's survivor benefit is calculated as if the member had retired on the date of deferred retirement under the optional benefit selected and died the next day.

(3) In the event a member who is eligible for a deferred retirement dies before the deferred retirement date without making a written selection of an option listed in Section 6.03 of this Act and the member has a spouse surviving, the surviving spouse of the member may select the optional form of a survivor benefit in the same manner as if the member had made the selection on the member's scheduled date of deferred retirement or may select a lump-sum payment equal to the accumulated deposits

standing to the member's credit in Fund No. 1 plus an equivalent amount from Fund No. 2. If the member does not have a surviving spouse, the member's beneficiary or, if no beneficiary exists, the executor or administrator of the member's estate is entitled to select either an Option V survivor benefit (15-Year Certain and Life Annuity), effective on the member's scheduled date of deferred retirement, or a lump-sum payment equal to the accumulated deposits standing to the member's credit in Fund No. 1 plus an equivalent amount from Fund No. 2.

(4) When monthly survivor benefits are payable as a result of the death of a member before the member's deferred retirement date, an additional sum of \$10,000 is payable as a death benefit to the member's beneficiary or, if no beneficiary exists, to the member's estate.

ARTICLE VI

SECTION 6.01. SERVICE RETIREMENT BENEFITS AND INCREASES IN BENEFITS. (a) On retirement after having reached the member's normal retirement date, members entitled thereto shall receive a service retirement benefit in the form of a life annuity (modified cash refund). Each monthly payment of the life annuity (modified cash refund) shall be equal to one-twelfth of the product of 2.88 percent of a member's average final compensation multiplied by the number of months of creditable service. The retirement benefit percent specified by this section to calculate the amount of the monthly payment of the life annuity (modified cash refund) may be changed after 1997 if:

(1) the change is approved by the board's actuary;

(2) the change is adopted by the board as a board rule;

(3) the change applies to all present members, all retired members, and all who become members after the effective date of the change in the retirement benefit percent;

(4) a member's vested interest as of the last day of the month immediately preceding the effective date of the change in the retirement benefit percent is not reduced; and

(5) a retirement annuity being paid by the police retirement system to members or to the surviving spouses or beneficiaries of members who retired before the effective date of the change in the retirement benefit percent is changed as prescribed by Subsection (d)(6) of this section, except that a reduction in annuities may not cause the member's, surviving

spouse's, or beneficiary's annuity payment to be reduced below the base retirement amount calculated under this Act.

(b) An annuity shall be considered as a life annuity (modified cash refund) with the first monthly payment due at the end of the month immediately following the member's retirement date, but the amounts of these and all other benefits payable under this Act shall be subject at all times to such adjustments as may be required to ensure actuarial soundness as may be approved by the actuary and adopted by the board, except that annuities already granted may not be reduced below the base retirement amount granted at time of retirement.

(c) Subject to the conditions, limitations, and restrictions set forth in this subsection, as well as all other pertinent conditions, limitations, and restrictions set forth elsewhere in this Act, the board shall have the power to authorize an annual cost of living adjustment (hereinafter referred to as "adjustment") payment which, once authorized, shall be paid out monthly and which shall be added to the current monthly payment of all retirement annuities of each and every member of the police retirement system who has retired or those of the members' surviving spouses or beneficiaries who have become entitled to benefits on or before December 31 of any preceding year. Before January 1 of each year, the board shall make a separate determination of whether to authorize the payment of an annual adjustment and the amount of the adjustment, if any. These adjustments shall be paid monthly beginning January 31 of the succeeding calendar year.

(d) In determining whether to authorize the payment and the amount of any annual adjustment, the board shall be governed by the following conditions, considerations, limitations, and restrictions:

(1) Any and all determinations to authorize the payment of any amount must be based on the ability of the system to pay such an amount and shall not be based upon the individual needs of any particular retired members, surviving spouses, or beneficiaries.

(2) Prior to the board's authorizing the payment of an annual adjustment, the actuary must approve and recommend such an adjustment to the board and certify in writing to the board that based on the sound application of actuarial assumptions and methods consistent with sound actuarial principles and standards, it is demonstrable that the system has and will continue to have the ability to pay such an amount out of its realized income after all other obligations of the system have been paid.

(3) The amount of the adjustment payment to the retirement benefit for each retired member, surviving spouse, or beneficiary shall be increased or decreased by an amount, not to exceed six percent, determined by the board and the actuary based on the consumer price index, actuarial experience of the system, investment experience of the system, and cost-of-living increases granted in the past. Such increases shall be prorated for a member who retired during the year in the ratio that the number of the member's completed months after the member's retirement in

that year bears to 12. The cost-of-living increase presented for approval by the board must be approved by the system's actuary.

(4) The board shall have the authority and the duty, at any and all times and without notice to anyone, to decrease the amount of the adjustment payment as much as is necessary to protect the continuity of the police retirement system and to protect the corpus of the system should the ability of the system to continue to pay the adjustment be threatened by a change in the economic situation of the United States, the State of Texas, the city, or the system itself such as would dictate that a prudent trustee should authorize such a decrease; provided that if the threatened change should prove not to have had the predicted harmful effect on the system, then the board shall have the authority to reinstate the payment of all or any portion of the amount of the previously decreased adjustment payments. If at any time the actuary in the actuary's discretion shall deem the continuity of the system to be threatened by whatever cause, the actuary shall have the power and authority to order the board to make no further adjustment payments and the board shall have the power and authority to see to it that no further adjustment payments are made unless and until the actuary shall order either that the same adjustment payments which were discontinued by the actuary's order be reinstated retroactively, or that the adjustment payments (of the same amount as those which were discontinued) be reinstated prospectively from the date of the actuary's order to reinstate or the actuary may recommend to the board that the adjustment payments be decreased by whatever amount

the actuary may deem to be sufficient to protect the continuity of the system. The board shall not have the power or authority to authorize or permit the payment of any adjustment payments in excess of that recommended by the actuary.

(5) Provided that the adjustment payments, if any, shall be in addition to the benefits to which a retired member, surviving spouse, or beneficiary is otherwise entitled under this Act, and in no event shall a reduction in the adjustment payments cause the retired member's, surviving spouse's, or beneficiary's benefits to be reduced below the actual base retirement amount calculated under the provisions of this Act.

(6) Service and disability retirement annuities and survivor benefits being paid by the police retirement system to members or to the surviving spouses or beneficiaries of members who retire before the effective date of any change in the retirement benefit percent under this section that occurs after 1995 shall be changed beginning with the first payment due after the effective date of the change in the retirement benefit percent. The amount of the change for a member or the surviving spouse or beneficiary of the member is equal to a percentage multiplied by the annuity payment otherwise due. The percentage is equal to the new retirement benefit percentage divided by the retirement benefit percent in effect immediately before the effective date of the new retirement benefit percent, minus one, and multiplied by 100.

(e) The following terms and definitions shall be used in construing the meaning of this section:

(1) "Base retirement amount" means that monthly retirement amount calculated under this Act at the time of actual retirement, reduced for the optional form selected under Section 6.03(a) of this Act, and further reduced, if appropriate for the optional form selected, if the member or the member's beneficiary has died.

(2) "Consumer price index" means the Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics, United States Department of Labor, or its successor in function.

(3) "Continuity of the system" means the ability of the police retirement system to continue to meet all of its purposes, to continue to thrive and grow along with the economy of the United States, the State of Texas, and the city, or to be able to sustain itself and its beneficiaries during and throughout periods of deflation or recession in that economy.

(f) For purposes of this section, compensation of each noneligible member taken into account under this Act may not exceed \$200,000 per calendar year, indexed pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The \$200,000 limit does not apply to an eligible member. For purposes of this subsection, an eligible member is any individual who first became a member before January 1, 1996. For purposes of this subsection, a noneligible member is any other member.

SECTION 6.02. ELIGIBILITY FOR SERVICE RETIREMENT. (a) Any member shall be eligible for service retirement if the member has

attained the age of 55 years and completed at least 20 years of creditable service with the city, or has completed 23 years of creditable service, excluding any military service established under Section 5.02 of this Act.

(b) Except as provided by Subsection (c) of this section, the age and length-of-service requirements for service retirement may be changed if the change:

- (1) is approved by the board's actuary;
- (2) is adopted by the board as a board rule;
- (3) applies to all persons who are members on the effective date of the change and all persons who become members after the effective date of the change; and

- (4) does not increase the requirements for a person who already is eligible for service retirement on the effective date of the change.

(c) Any member, irrespective of the number of years of creditable service, shall be eligible for service retirement after attaining the age of 62 years. No member shall be paid any benefits by the system so long as the member is employed by the city as a police officer or by the system as an employee of the system's administrative staff.

SECTION 6.03. ANNUITY OPTIONS. (a) In lieu of the life annuity (modified cash refund) defined in Section 6.01 of this Act, a member attaining eligibility for service retirement may file a duly acknowledged written designation which, if approved by the board, shall entitle the member to receive the actuarial

equivalent of the life annuity by electing one of the following options:

OPTION I. Joint and 100 Percent Survivor Annuity. A reduced annuity payable to the member but with the provision that on the member's death, the annuity shall be continued throughout the life of and be paid to such person that the member shall irrevocably designate before the member's retirement date.

OPTION II. Joint and 50 Percent Survivor Annuity. A reduced annuity payable to the member but with the provision that on the member's death, one-half of the annuity shall be continued throughout the life of and be paid to the person that the member shall irrevocably designate before the member's retirement date.

OPTION III. Joint and $66\frac{2}{3}$ Percent Survivor Annuity. A reduced annuity payable to the member but with the provision that on the member's death, two-thirds of the annuity shall be continued throughout the life of and be paid to the person that the member shall irrevocably designate before the member's retirement date.

OPTION IV. Joint and $66\frac{2}{3}$ Percent Last Survivor Annuity. A reduced annuity payable to the member but with the provision that two-thirds of the annuity to which the member would be entitled shall be continued throughout the life of and be paid to the survivor after the death of either the member or the person that the member shall irrevocably designate before the member's retirement date.

OPTION V. 15-Year Certain and Life Annuity. A reduced annuity shall be payable to the member for life. In the event of

the member's death before 180 monthly payments have been made, the remainder of the 180 payments are payable to the member's beneficiary or, if one does not exist, to the member's estate.

(b) The amount of the annuity payment in Options I, II, III, IV, and V shall be determined without considering the minimum cumulative payment of the retired member's accumulated deposits since that refund feature will stay in effect as indicated in Subsection (b), Section 6.06, of this Act.

(c) In computing the actuarial equivalent for optional forms of annuity payment for retirement and death benefits under this section, the UP-1984 Table shall be used with no age setback for members and an age setback of seven years for beneficiaries, and interest shall be computed at a rate of 8.5 percent.

SECTION 6.04. TERMINATION PRIOR TO RETIREMENT; TREATMENT OF ACCUMULATED DEPOSITS. (a) On employment termination, the member shall receive the amount of the accumulated deposits standing to the member's credit in one lump sum, except that if such member has had at least 10 years of creditable service at the time the member separates from service, the member shall have a right to elect to leave the member's accumulated deposits with the police retirement system until such time as the member shall have applied in writing for service retirement and shall have attained an age at which the member shall have become entitled to receive a service retirement benefit under this Act, at which time the member shall be entitled to a service retirement benefit computed under the formula in Section 6.01(a) of this Act in effect on the

last day of the month immediately preceding the month of the first benefit payment.

(b) If a member who has attained age 70½ separates or has separated from service without applying for retirement or a refund of accumulated deposits, the police retirement system shall attempt to send to that member a written notice as soon as practicable after the later of the date the member attains age 70½ or the date the member separates from service. The written notice must advise the member of the requirement under Section 401(a)(9) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401) to retire and begin receiving a monthly retirement benefit. If, before the 91st day after the date the police retirement system sends the notice, the member has not filed an application for retirement or a refund, the member is considered to have retired on the last day of the third month following the later of the two dates specified by this subsection. If applicable, the retirement option shall be determined in accordance with the member's written selection of optional benefit and designation of beneficiary under Section 6.06(a)(1) of this Act. Otherwise, the member shall receive the life annuity under Section 6.01 of this Act.

SECTION 6.05. DEATH OF A MEMBER; TREATMENT OF ACCUMULATED DEPOSITS. (a) In the event of death of a member who is ineligible for retirement, the accumulated deposits standing to the member's credit in Fund No. 1 and an equivalent amount from Fund No. 2 shall be payable in a lump sum to the member's beneficiary or, if no beneficiary, to the member's estate, unless the member shall have directed otherwise in writing duly

acknowledged and filed with the board. The lump sum may not be less than \$10,000. When the \$10,000 minimum is payable, the amount payable from Fund No. 2 is \$10,000 minus the accumulated deposits standing to the member's credit in Fund No. 1.

(b) Seven years after a member separates from service with less than 10 years' service, if no previous demand has been made, any accumulated deposits standing to the member's credit shall be returned to the member or to the member's estate, but if the contributor or the member's personal representative cannot be found or if the member dies without leaving heirs or legatees, the member's accumulated deposits shall thereafter become a part of Fund No. 2.

(c) In the event of death of a member receiving a retirement benefit, the sum of \$10,000 shall be payable in a lump sum to the member's beneficiary or, if no beneficiary, to the member's estate, unless the member shall have directed otherwise in writing, duly acknowledged and filed with the board. The payment under this subsection shall be made from the retiree death benefits fund described in Section 6.08 of this Act.

SECTION 6.06. SELECTING OPTIONS; DESIGNATING BENEFICIARIES.

(a)(1) Within one year prior to the date on which a member becomes eligible for service retirement under any provision of this article, the member may file with the board the member's written statement either selecting one of the optional benefits authorized by this Act and designating the beneficiary of the option if one is selected or stating that the member has been afforded an opportunity to select an option but does not desire to

do so. An option selection shall become effective at the member's date of eligibility for service retirement. The member shall retain the right to make a final selection until the date of retirement. The final selection shall be binding on all parties.

(2) After filing the written statement selecting one of the optional benefits, the member may continue in service and thereafter retire any time after eligibility by filing a written application for service retirement. If the member dies before retirement but after becoming eligible for service retirement, the member's survivor benefit is calculated as if the member had retired on the last day of the calendar month of death under the optional benefit selected.

(3) In the event a member who is eligible for service retirement dies without making a written selection of one of the options listed in Section 6.03 of this Act and if the member leaves a spouse surviving, then the surviving spouse of such member may select the optional form of the survivor benefit in the same manner as if the member had made the selection or may select a lump-sum payment equal to the accumulated deposits standing to the member's credit in Fund No. 1 plus an equivalent amount from Fund No. 2. If the member leaves no spouse surviving, then the member's beneficiary, or if no beneficiary exists, the executor or administrator of the estate of the member, is entitled to elect either an Option V survivor benefit (15-Year Certain and Life Annuity), effective the last day of the calendar month in which the death of the member occurs, or a lump-sum payment equal to the accumulated deposits standing to the member's credit in Fund No. 1

plus an equivalent amount from Fund No. 2. In the event of the death of the surviving spouse before having received survivor benefits equal to the amount of the member's accumulated deposits at date of the member's death, the excess of such accumulated deposits over the survivor benefits paid shall be refunded in one sum to the member's estate.

(4) When monthly survivor benefits are payable as a result of the death of a member before retirement, an additional sum of \$10,000 shall be payable as a death benefit to the member's beneficiary or, if no beneficiary exists, to the member's estate.

(b) In the event of death of the retired member under any retirement option and the death of the person irrevocably designated by the retired member when Option I, Option II, Option III, Option IV, or Option VI, as that option existed before the amendment of Section 6.03(a) of this Act by H.B. No. 1242 or S.B. No. 588, Acts of the 75th Legislature, Regular Session, 1997, as described in Section 6.03 of this Act is in effect, before monthly retirement benefits have been received that are equal to or greater than the retired member's accumulated deposits, then the member's estate will receive the excess of the retired member's accumulated deposits over the retirement benefits paid.

SECTION 6.07. RETROACTIVE DEFERRED RETIREMENT OPTION PLAN.

(a) The retroactive deferred retirement option plan, referred to as RETRO DROP, is an option a member eligible for service retirement based on 23 years of creditable service, excluding any military service established under Section 5.02 of this Act, may elect at retirement subject to the conditions of this section.

The number of years of creditable service required for this option to be available to a member may be changed if the change:

- (1) is approved by the board's actuary;
- (2) is approved by the board as a board rule;
- (3) applies to all persons who are members on the effective date of the change and all persons who become members after the effective date of the change; and

- (4) does not increase the requirements for a person who already is eligible to participate in RETRO DROP on the effective date of the change.

(b) The member shall select the RETRO DROP benefit computation date. The date:

- (1) must be the last day of the month used for the purpose of determining the monthly retirement benefit;

- (2) may not precede the date the member first became eligible for service retirement based on the years of creditable service required under Subsection (a); and

- (3) may not precede the date of retirement by more than 36 months.

(c) On the election of RETRO DROP and the selection of the RETRO DROP benefit computation date, the member's monthly life annuity (modified cash refund) is computed according to Section 6.01 of this Act as if the member had retired on the RETRO DROP benefit computation date but including any creditable service established after that date under Section 5.02, Section 5.03, or Section 5.04 of this Act. In lieu of the life annuity (modified cash refund) defined in Section 6.01 of this Act, the member may

file a duly acknowledged written designation to elect one of the annuity options described by Section 6.03 of this Act in effect at retirement that are actuarially equivalent at the RETRO DROP benefit computation date.

(d) The RETRO DROP benefit accumulation period includes each month from the month following the RETRO DROP benefit computation date through the month of retirement. The RETRO DROP benefit accumulates month by month during the accumulation period as the sum of:

(1) the monthly annuity amounts that would have been paid during the RETRO DROP benefit accumulation period;

(2) deposits made by the member to the police retirement system as a percent of the basic hourly earnings of the member during the RETRO DROP benefit accumulation period; and

(3) interest credited on the RETRO DROP benefit during the RETRO DROP benefit accumulation period.

(e) The first monthly annuity amount that would have been paid during the RETRO DROP benefit accumulation period is the amount defined by Subsection (c) of this section. Subsequent monthly annuity amounts that would have been paid during the RETRO DROP benefit accumulation period must include any cost-of-living increases or special ad hoc increases in annuity amounts granted in accordance with Subsections 6.01(c) and (d) of this Act.

(f) The interest credited to the RETRO DROP benefit during the accumulation period shall be credited on each December 31 in the RETRO DROP benefit accumulation period in an amount equal to five percent of the amount of the RETRO DROP benefit as of the

January 1 of the same calendar year. If the month of retirement is other than December, the interest shall be credited for the partial year at the end of the month of retirement in an amount equal to five-twelfths of one percent of the amount of the accumulated RETRO DROP benefit as of January 1 of that year multiplied by the number of complete months of service in that year. A complete month does not include a month in which service amounted to fewer than 15 days.

(g) A member who elects RETRO DROP receives both a monthly annuity and a RETRO DROP benefit. The first monthly annuity payment shall be on the last day of the month immediately following the month of retirement. Unless the member elects to receive partial payments of the RETRO DROP benefit as provided by Subsection (h), the member shall receive a lump-sum payment equal to the accumulated RETRO DROP benefit, which amount shall be paid to the member on the date selected by the member. The date must be a business day and must be not earlier than the last day of the month immediately following the month of retirement. If the member dies before the member receives the lump sum, the lump sum is payable to the member's beneficiary or, if no beneficiary exists, to the member's estate, unless the member has directed otherwise in a duly acknowledged writing filed with the board.

(h) Instead of a single lump-sum payment, a member may elect to receive partial payments from the member's RETRO 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 RETRO DROP account balance in a single lump-sum payment, with the payment to be made under rules adopted by the board.

(i) If a member elects partial payments, the member's RETRO DROP account shall be credited with earnings and losses of the system under this subsection for periods after the member's retirement date and before the member's RETRO DROP account is completely distributed. The member's RETRO DROP account shall be credited with earnings or losses at an annual rate established under a rule adopted by the board. The board may change the annual rate from time to time by amending that rule.

(j) The board may modify or eliminate the RETRO DROP provisions of this section by the adoption of board rules if the modification or elimination is approved by the board's actuary and would not cause the amortization period for the retirement system's unfunded actuarial liability to exceed the maximum amortization period adopted by the Governmental Accounting Standards Board.

SECTION 6.08 RETIREE DEATH BENEFIT FUND. (a) The police retirement board shall establish a retiree death benefit fund and shall deposit in such fund contributions paid by the city to provide retiree death benefits in accordance with this section. The board may, but is not required to, credit interest to the retiree death benefit fund annually at such rate as the board may determine.

(b) The police retirement system shall pay death benefits under Section 6.05(c) of this Act only from money in the retiree death benefit fund, and the benefits are not an obligation of other funds of the retirement system.

(c) Based upon the recommendation of the system's actuary, the board shall adopt such rates and tables as are considered necessary to determine the retiree death benefit fund contribution rate of the city. At the same time as the actuary makes a valuation of the assets and liabilities of the system pursuant to Section 3.09 of this Act, the actuary shall also make an actuarial valuation of the assets and liabilities of the retiree death benefit fund, and upon recommendation by the actuary, the board shall adjust the rates and tables for the retiree death benefit fund.

(d) If at any time the amount of payments due from the retiree death benefit fund exceeds the balance of such fund, the board may direct that funds be transferred from the general retirement fund to the retiree death benefit fund in such amounts as are necessary to cover the deficiency. Any sums transferred to the retiree death benefit fund under this subsection shall be repaid to the general retirement fund of the retirement system at such time as subsequent contributions by the city have resulted in the accumulation of a sufficient amount in the retiree death benefit fund for such a repayment to appear prudent.

(e) Contributions by the city to the retiree death benefit fund shall be made at the same time as the city makes its contribution to the retirement system under Section 8.01 of this

Act, and the amount of the city's contribution under Section 8.01 of this Act each pay period shall be reduced by the amount of the city's contribution to the retiree death benefit fund for that same pay period.

ARTICLE VII

SECTION 7.01. DISABILITY RETIREMENT. (a) Only members who are classified as Active-Contributory or Inactive-Contributory, pursuant to Subsection (e) of Section 4.01 of this Act, or who are approved for extended disability retirement eligibility under this subsection, are eligible for consideration for disability retirement pursuant to this article. A member may be approved by the board for extended disability retirement eligibility only:

(1) if that member applies in writing to the board for extended eligibility on a date not earlier than the 30th day before and not later than the 30th day after the date of becoming an Active-Noncontributory member, setting forth the reasons why the member should be granted the extended eligibility;

(2) if the board, in its sole discretion, approves the application for extended eligibility; and

(3) on the terms the board determines to be appropriate.

(b)(1) If a member with less than 10 years of creditable service has become mentally or physically incapacitated for the performance of the employment duties the member had immediately before incapacitation as a direct result of injuries sustained subsequent to the member's effective date of membership in the police retirement system, the member may apply for disability retirement. Such application made for or on behalf of the injured member shall show that the injury sustained was as a direct or proximate result of the performance of the member's employment

duties with the city or with the system and that it is likely to result in the member's inability to perform the duties of a position offered to the member in the system, the police department, or any other department in the city that pays as much or more than the current pay of the position the member was holding on the date of the member's disability.

(2) On recommendation of physicians or vocational rehabilitation experts appointed or selected by the board that the member's incapacity is likely to result in the member's inability to perform the duties of a position offered to the member in the system, the police department, or any other department in the city that pays as much or more than the current pay of the position the member was holding at the date of the member's disability and after considering any additional evidence which the board deems relevant, the board may award such member disability retirement benefits. The decision of the board is final.

(c) If a member with more than 10 years of creditable service has become mentally or physically incapacitated for the performance of the employment duties the member had immediately before incapacitation, the member may apply for disability retirement. Such application made for or on behalf of the disabled member shall show that the incapacity is likely to result in the member's inability to perform the duties of a position offered to such member in the system, the police department, or any other department in the city that pays as much or more than the current pay of the position the member was holding on the date of the member's disability. On recommendation of physicians or

vocational rehabilitation experts appointed or selected by the board that the member's incapacity is likely to result in the member's inability to perform the duties of a position offered to the member in the system, the police department, or any other department in the city that pays as much or more than the current pay of the position the member was holding on the date of the member's disability and after considering any additional evidence which the board deems relevant, the board may award such member disability retirement benefits. The decision of the board is final.

SECTION 7.02. COMPUTATION OF DISABILITY BENEFIT. (a) On award of disability retirement benefits, the member shall receive a disability retirement benefit computed in the same manner that a service retirement benefit would be computed at the member's normal retirement date, based on average final compensation and creditable service at date of disability retirement without reduction for early retirement. If the disability is a direct or proximate result of the performance of the member's employment duties with the system or the city, then the disability retirement benefit will be subject to a minimum benefit based on average final compensation at date of disability retirement and 20 years of creditable service. The options allowed are life annuity or its actuarial equivalent payable in the form described as Option I, Option II, Option III, Option IV, or Option V in Section 6.03 of this Act. The disability benefits paid to the member will be paid from Fund No. 1 until the amount received equals the member's

accumulated deposits; thereafter the benefits will be paid from Fund No. 2.

(b) For purposes of this section, in computing the actuarial equivalent for optional forms of annuity payment for disability benefits under this section, 82.5 percent of the 1965 Railroad Retirement Board Disabled Annuitants Mortality Table shall be used for members, the UP-1984 Table with an age setback of six years shall be used for beneficiaries, and interest shall be computed at a rate of 8.5 percent.

SECTION 7.03. DISABILITY BENEFIT REPORTS. (a)(1) A member receiving a disability retirement benefit is required to file a report to the board concerning continued proof of disability one year after the date on which the board originally awarded the member disability retirement. The report shall include:

(A) a current statement of the member's physical and/or mental condition, signed by the member's attending physician; and

(B) a statement of all employment activities pursued in the preceding one-year period and a copy of federal income tax returns applicable to the one-year period.

(2) The board may verify all information submitted in this report. A disabled member shall file an annual report containing this same type of information every year thereafter on the anniversary date of the member's disability retirement; the annual report shall be filed no later than 60 days following the due date.

(b) The pension officer is responsible for a yearly report to the board listing those disabled members who should be examined. The board shall have the right to order an examination of any person on disability retirement after the member has received a disability retirement benefit for a one-year period and continuing on an annual basis thereafter until the member reaches the age of 62 years. If the member refuses to submit to an examination by physicians or vocational rehabilitation experts appointed or selected by the board or if the member refuses to submit an annual report concerning continued proof of disability, the disability retirement benefit shall be discontinued until such refusal is withdrawn.

(c)(1) If, during the first 2-1/2 years, the annual medical examination shows that the member is able to perform the duties of a position offered to the member in the system, the police department, or any other department in the city that pays as much or more than the current pay of the position the member was holding on the date of the member's disability, the board may discontinue the disability retirement benefit. If after the disabled member has received disability benefits from the system for at least 2-1/2 years the member is able to perform the duties of any occupation for which the member is reasonably suited by education, training, or experience, the board shall review and modify the disability benefit according to the following provisions:

(A) if the member is able to earn at least as much money in the member's new job as the member would have in the

member's most recent position with the system or the police department, the board may terminate the member's benefit;

(B) if the member is able to earn between one-half as much money and as much money in the member's new job as the member would have in the member's most recent position with the system or the police department, the board may reduce the monthly disability benefit to one-half of its original amount; or

(C) if the member is not able to earn at least one-half as much money in the member's new job as the member would have in the member's most recent position with the system or the police department, the board may continue the benefit unchanged.

(2) If the member who received a disability benefit pursuant to Subsection (b) of Section 7.01 of this Act has the member's benefit discontinued pursuant to this provision and does not return to the employ of the system or the police department, any remaining balance of Fund No. 1 benefits will be refunded to the member. If the member who received a disability benefit pursuant to Subsection (c) of Section 7.01 of this Act has the member's benefit discontinued pursuant to this provision and does not return to the employ of the system or the police department, the member's accumulated deposits shall remain in the system, and the member shall be considered a vested noncontributory member unless the member elects a refund of the remaining accumulated deposits.

(d) If a disabled member returns to employment with the city as a police officer or to employment with the system, the disability retirement benefit shall cease. Such person shall be

reinstated as an active member of the system and shall comply with all requirements. Creditable service accumulated prior to disability shall be restored to the full amount standing to the member's credit as of the date the board found the member eligible for disability retirement.

(e) The board may reinstate any disability benefit that has been previously terminated or reduced if the disabled member's condition has worsened due to the same cause for which the member was originally disabled.

ARTICLE VIII

SECTION 8.01. METHOD OF FINANCING. (a)(1) Deposits by the members to the police retirement system shall be made at a rate of at least thirteen percent of the basic hourly earnings of each member. Deposits required to be made by members shall be deducted from payroll. On recommendation of the board, the Active--Contributory members may by a majority of those voting increase the rate of member deposits above thirteen percent to whatever amount the board has recommended. If the deposit rate for members has been increased to a rate above thirteen percent, the rate may be decreased if the board recommends the decrease, the board's actuary approves the decrease, and a majority of the Active--Contributory members voting on the matter approve the decrease.

(2) The city shall contribute amounts equal to 18 percent of the basic hourly earnings of each member employed by the city for all periods on or before September 30, 2010, subject to additional amounts as provided by Subsection (3) of this subsection. The city shall contribute amounts equal to 19 percent of the basic hourly earnings of each member employed by the city for all periods after September 30, 2010 and before October 1, 2011, subject to additional amounts as provided by Subsection (3) of this subsection. The city shall contribute amounts equal to 20 percent of the basic hourly earnings of each member employed by the city for all periods after September 30, 2011, and before October 1, 2012, subject to additional amounts as provided by Subdivision (3) of this subsection. The city shall contribute amounts equal to 21

percent of the basic hourly earnings of each member employed by the city for all periods after September 30, 2012, subject to additional amounts as provided by Subdivision (3) of this subsection. The city council may also authorize the city to make additional contributions to the police retirement system in whatever amount the city council may determine. Contributions by the city shall be made each pay period.

(3) The city shall contribute amounts in addition to the amounts described by Subdivision (2) of this subsection as required by Section 803.101(h), Government Code, to fund the additional liabilities incurred by the police retirement system as a result of participating in the proportionate retirement program. The rate at which the city shall contribute additional amounts under this subdivision is equal to 0.25 percent of the basic hourly earnings of each member employed by the city for all periods from January 4, 2009 through September 30, 2009. The rate at which the city shall contribute additional amounts under this subdivision is equal to 0.63 percent of the basic hourly earnings of each member employed by the city for all periods after September 30, 2009, subject to adjustment under Subdivision (4) of this subsection.

(4) The additional contribution rate under Subdivision (3) of this subsection shall increase or decrease as considered necessary by the actuary for the police retirement system after each five-year period of participation by the system in the proportionate retirement program in order to update the amount necessary to fund the additional liabilities incurred by the system as a result of

participating in the proportionate retirement program and the consolidation of the city's public safety and emergency management department with the police department on January 4, 2009. The system's actuary shall perform an experience study that shall be the basis for a contribution rate adjustment under this subdivision. The effective date of the initial contribution rate adjustment under this subdivision is October 1, 2015. Each later contribution rate adjustment under this subdivision takes effect October 1 of every fifth year after the effective date of the initial contribution rate adjustment. The system's actuary shall present to the police retirement board the experience study on which any contribution rate adjustment under this subdivision is based not later than 45 days before the effective date of the adjustment, and the city's actuary shall have the opportunity to review and comment on the study. An adjustment in the additional contribution rate under this subdivision may not cause the additional contribution rate under Subdivision (3) of this subsection to be less than zero.

(b) Any change of the rates of deposit and the rates of contribution shall be published when approved by the board.

(c) Contributions by the city shall be paid to the system after appropriation by the city council.

(d) Expenses involved in administration and operation of the police retirement system shall be paid from the assets of the police retirement system subject to approval by the board. Such expenses shall include actuarial valuations of the system no less frequently than on a biennial basis, annual audits and/or

actuarial studies, preparation of annual reports, and staff assistance. Additional consulting may be authorized by the board and paid for from the assets of the police retirement system as deemed necessary from time to time by the board.

(e) Expenses incurred from investment advice, counsel, and management shall be paid from the assets of the police retirement system.

(f) The city shall make the police officer contributions to the system required by Subsection (a) of this section. The system shall make the administrative staff's contributions to the system.

Member contributions will be made by a reduction in their monetary compensation. Contributions made shall be treated as employer contributions in accordance with Section 414(h)(2), Internal Revenue Code (26 U.S.C. Section 414(h)(2)), for the purpose of determining tax treatment of the amounts under the federal Internal Revenue Code. These contributions are not includible in the gross income of the member until such time as they are distributed or made available to the member. Member contributions made as provided by this subsection shall be deposited to the individual account of each affected member and shall be treated as compensation of members for all other purposes of this Act and for the purpose of determining contributions to the federal Old-Age, Survivors, and Disability Insurance System (Social Security). The provisions of this subsection shall remain in effect as long as the plan covering members is a qualified retirement plan under Section 401(a), Internal Revenue Code (26

U.S.C. Section 401(a)), and its related trust is tax exempt under Section 501(a), Internal Revenue Code (26 U.S.C. Section 501(a)).

(g) If the police retirement system is terminated, further contributions may not be made by the city, and further deposits may not be made by the members for service after the date of termination. Members do not accrue any additional benefits after the date of termination. The benefit accrued by each member on the termination of the plan or the complete discontinuance of contributions under the plan and the benefit of any affected member on the partial termination of the plan, to the extent funded, become nonforfeitable notwithstanding the length of a member's service. The benefit accrued by a member also becomes nonforfeitable, if not already nonforfeitable, at the normal retirement date.

(h) A forfeiture from a member terminating employment and withdrawing the member's accumulated deposits may not be applied to increase the benefit that any other member would receive from the system. The actuary shall anticipate the effect of forfeitures in determining the costs under the system.

(i) The assets of the police retirement system shall be held in trust for the exclusive benefit of the members and their beneficiaries. The corpus or income may not be used for or diverted to a purpose other than the exclusive benefit of members or their beneficiaries, whether by operation or natural termination of the system, by power of revocation or amendment, by the happening of a contingency, by collateral arrangement, or by othermeans.

ARTICLE IX

SECTION 9.01. INVESTMENTS OF THE BOARD. (a) The police retirement board shall be the trustee of the funds of the police retirement system and shall have full power in its sole discretion to invest and reinvest, alter, and change such funds. The board shall invest the funds in whatever instruments or investments the board considers prudent. In making investments for the system, the board shall discharge its duties:

(1) for the exclusive purposes of:

(A) providing benefits to members and their beneficiaries; and

(B) defraying reasonable expenses of administering the system;

(2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the laws, documents, and instruments governing the system.

(b) No member of the board, except as herein provided, shall have any interest in, directly or indirectly, or receive any pay or emolument for the member's services. No member of the board shall, directly or indirectly, for himself or as an agent in any

manner use the funds or deposits of the police retirement system except to make the current and necessary payments authorized by the board; nor shall any member of the board become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the board.

(c) None of the funds or money mentioned in this Act shall be assignable. None of the funds or money mentioned in this Act shall be subject to execution, levy, attachment, garnishment, or other legal process.

(d) The right of a member to a retirement benefit, the return of accumulated deposits, the payment of a RETRO DROP lump sum, or any other right accrued or accruing to any person under the provisions of this Act, and the money in the trust created by this Act shall be unassignable except as specifically provided in this Act and shall not be subject to execution, levy, attachment, garnishment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever.

(e) Service retirement benefits, disability retirement benefits, survivor benefits, death benefits, and withdrawal benefits may be paid to a former spouse or other alternate payee under the terms of a domestic relations order, but only if the board determines that the order constitutes a qualified domestic relations order within the meaning of Chapter 804, Government Code. Benefit payments may be made to alternate payees only when and to the extent permitted by the qualified domestic relations order. The amount of any benefit payment under this Act made to an alternate payee under a qualified domestic relations order

shall reduce and offset the amount otherwise payable to the member or other beneficiary under this Act. On the death of an alternate payee under a qualified domestic relations order, the interest of the alternate payee in the benefits under this Act ends, and remaining benefits shall be paid as if the qualified domestic relations order had not existed.

ARTICLE X

SECTION 10.01. FALSE REPORT OR STATEMENT. Whoever with intent to deceive shall make any statement or report required under this Act which is untrue or shall falsify or permit to be falsified any record or records of the police retirement system shall forfeit any office or rights held by the person under the system, and such deception, falsification, or acquiescence in falsification shall be deemed a misdemeanor and the violation thereof shall be punishable by a fine not to exceed \$1,000.

SECTION 10.02. CORRECTION OF ERRORS. If any change or error in the records of the police retirement system should be discovered or should result in any member, retired member, surviving spouse, or beneficiary receiving from the police retirement system more or less than such member, retired member, surviving spouse, or beneficiary would have been entitled to receive had the records been correct, the police retirement board shall have the power to correct such error. Except as provided by Section 802.1024, Government Code, the retirement system shall, as far as possible, adjust the payments so that the actuarial equivalent of the benefits to which the member, retired member, surviving spouse, or beneficiary was correctly entitled shall be paid.

H.B. 155 of 2007 Regular Session (see Appendix, pages A-6 through A-10) may have changed the effect of Section 10.02.

ARTICLE XI

SECTION 11.01. LIMITATION ON PAYMENT OF BENEFITS.

(a) If the amount of any benefit payment otherwise due under this Act or the total payments due under this Act and any other qualified defined benefit plan maintained by this city would exceed the limitations provided by Section 415(b), Internal Revenue Code of 1986, as amended, and the regulations adopted under that section, the police retirement system shall reduce the amount of the benefit paid under this Act as required to comply with that section. If the annual additions that would otherwise be allocated under this Act, or the total annual additions under this Act and any other qualified plan maintained by the city would exceed the limits under Section 415(c), Internal Revenue Code of 1986 the annual additions under this Act shall be reduced to the extent required to comply with Section 415(c) Internal Revenue Code of 1986.

(b) For purposes of determining if the benefits or annual additions satisfy the limits provided by Subsection (a) of this section, the compensation to be used is wages within the meaning of Section 3401(a), Internal Revenue Code of 1986, plus amounts deferred at the election of the member that would be included in wages if not deferred under the rules of Section 402(e)(3), 125(a), 132 (f)(4), 457(b), 402(h)(1)(B), or 402(k), Internal Revenue Code of 1986. However, any rules that would limit the remuneration included in wages based on the nature or location of the employment or the services performed are disregarded for

purposes of determining compensation. In addition, any wages paid after a severance from employment are not included as compensation for purposes of the subsection unless payment is for regular pay as described in 26 C.F.R. Section 1.415(c)-2(e) (3) (ii) and is made by the later of two and one-half months after the severance from employment or the end of the calendar year that includes the date of severance from employment. If excess annual additions are made to any member's account despite the efforts of the board of trustees, the amount shall be treated in accordance with 26 C.F.R. Section 1.402(g) -1(e) (2) or (3).

(c) Notwithstanding any other provision of this Act, the applicable mortality table for purposes of adjusting a benefit due to the limitations provided under Section 415 (b) (2) (B) or (D), Internal Revenue Code of 1986, is the table prescribed by Revenue Ruling 2001-62.

ARTICLE XII

SECTION 12.01. DISTRIBUTION RULES FOR SERVICE RETIREMENT AND DEATH ANNUITY PAYMENTS. (a) If a member selects, or if a member's death before retirement results in the payment of, an optional annuity providing for payment of a fixed number of monthly payments to the member's beneficiary or estate if the member dies before the total number of payments has been completed, the option is limited as provided by Subsections (b), (c), (d), and (e) of this section.

(b) If, according to mortality tables adopted by the Internal Revenue Service, at the time of the member's retirement the joint life expectancy of the member making the selection and of the beneficiary is less than the minimum period that monthly payments would be required under the option selected, the member must select another option so that the minimum period that monthly payments would be required does not exceed the joint life expectancy of the person making the selection and of the beneficiary.

(c) If, according to mortality tables adopted by the Internal Revenue Service, the life expectancy of a person to whom a benefit will be paid as the result of a member's death before retirement is less at the time of the member's death than the minimum period that monthly payments would be required under the option selected, the system shall adjust the minimum period that monthly payments will be required to a period that is not less than 60 months and that is the greatest multiple of 12 months that

does not exceed the life expectancy of the person to whom the benefit will be paid. The amount of the monthly payment shall be adjusted to the actuarial equivalent of the payments that would be made for the greater number of months.

(d) If the member making the selection designates the member's estate as beneficiary and if, according to mortality tables adopted by the Internal Revenue Service, the life expectancy of that member is less than the minimum period that monthly payments would be required under the option selected, the member must select another option so that the minimum period that monthly payments would be required does not exceed the member's life expectancy at the time of the member's retirement.

(e) If an estate will be paid monthly benefits as the result of a member's death before retirement for a period that would exceed 60 months, the period for which the payments will be made shall be reduced to 60 months, and the amount of the monthly payment to the estate is the actuarial equivalent of the payments that would have been made for the greater number of months.

(f) If a member selects an optional annuity that is payable after the retiree's death throughout the life of a beneficiary who is not the retiree's spouse, payments to the beneficiary after the retiree's death may not exceed the applicable percentage of the annuity payment that would have been payable to the retiree using the following table:

Excess of age of member over age of beneficiary:	Applicable percentage:
10 years or less	100 percent
more than 10 years but less than 25 years	67 percent
25 years or more	50 percent

(g) Unless the member's spouse is the beneficiary of an optional annuity that guarantees a fixed number of monthly payments, the guaranteed number of payments may not exceed the applicable period using the following table:

Age of member at retirement:	Maximum number of guaranteed monthly payments:
less than 84	180
at least 84 but less than 91	120
91 or more	60

SECTION 12.02. DISTRIBUTION RULES FOR DISABILITY ANNUITY PAYMENTS. (a) If a member selects an optional annuity providing for payment of a fixed number of monthly annuity payments to the member's beneficiary or estate if the member dies before the total number of payments has been completed, the option is limited as provided by Subsections (b) and (c) of this section.

(b) If, according to mortality tables adopted by the Internal Revenue Service, at the time of the member's retirement the joint life expectancy of the member making the selection and of the beneficiary is less than the minimum period that monthly payments would be required under the option selected, the member must select another option so that the minimum period that monthly

payments would be required does not exceed the joint life expectancy of the person making the selection and of the beneficiary.

(c) If the member making the selection designates the member's estate as beneficiary and if, according to mortality tables adopted by the Internal Revenue Service, the life expectancy of that member is less than the minimum period that monthly payments would be required under the option selected, the member must select another option so that the minimum period that monthly payments would be required does not exceed the member's life expectancy at the time of the member's retirement.

(d) If a member selects an optional annuity that is payable after the retiree's death throughout the life of a beneficiary who is not the retiree's spouse, payments to the beneficiary after the retiree's death may not exceed the applicable percentage of the annuity payment that would have been payable to the retiree using the following table:

Excess of age of member over age of beneficiary:	Applicable percentage:
10 years or less	100 percent
more than 10 but less than 25 years	67 percent
25 years or more	50 percent

(e) Unless the member's spouse is the beneficiary of an optional annuity that guarantees a fixed number of monthly payments, the guaranteed number of payments may not exceed the applicable period using the following table:

Age of member at retirement:

Maximum number
of guaranteed
monthly payments:

less than 84

180

at least 84 but less than 91

120

91 or more

60

ARTICLE XIII

SECTION 13.01. TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(a) Notwithstanding any provision of this Act 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 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.

(b) In this section:

(1) "Eligible rollover distribution" means 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:

(A) any distribution that is one of a series of substantially equal periodic payments made at least annually for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and distributee's beneficiary, or for a specified period of 10 years or more;

(B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401); or

(C) the portion of any distribution that is not includible in gross income

(2) "Eligible retirement plan" means an individual retirement account described by Section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 408), an individual

retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 408), an annuity plan described in Section 403(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), a qualified trust described in Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401), an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), or an eligible plan under Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred from the plan, provided that any of the vehicles described above accepts the distributee's eligible rollover distribution. The term applies to a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order within the meaning of Chapter 804 Government Code. In the case of an eligible rollover distribution to a non-spouse beneficiary, an eligible retirement plan includes only an individual retirement account or individual retirement annuity described above.

(3) "Distributee" means a member or former member, the member's or former member's surviving spouse, or the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as prescribed by

Section 804.003, Government Code, or the member's or former member's non-spouse beneficiary.

(4) "Direct rollover" means a payment by this system to the eligible retirement plan specified by the distributee.

SECTION 13.02. MANDATORY DISTRIBUTIONS PROHIBITED. A member or former member who has separated from service may not be required to receive an eligible rollover distribution, as defined in Section 13.01(b)(1) of this Act, without the member's consent unless the member or former member is at least 70-1/2 years of age.

Appendix A

Three Other 2007 Amendments to Texas State Law
Affecting the Austin Police Retirement System

1. Act Relating to Participation in Proportionate Retirement
Program

SECTION 1. Government Code Title 8, Subtitle A, Chapter 803, Subchapter B, Section 803.101 is amended by adding Subsections (g) and (h) to read as follows:

(g) The governing body of a municipality described by Section 803.0021(1) that finances a public retirement system for police officers or firefighters may not approve the retirement system's election under Subsection (f) to participate in the proportionate retirement program unless an actuary acting on behalf of the municipality reviews the initial cost to the municipality of making the election.

(h) If the governing body of a public retirement system under Subsection (g) adopts a resolution to participate in the proportionate retirement program, the governing body of the municipality that finances the retirement system shall appropriate and pay to the retirement system, at the same time the municipality makes the municipality's monthly contribution to the retirement system, the additional amount necessary, as determined by the retirement system's actuary, to fund the additional liabilities incurred by the retirement system as a result of participating in the proportionate retirement program.

SECTION 2. This Act takes effect June 15, 2007.

2. Act Relating to Audits of Actuarial Valuations, Studies and Reports of Austin Police Retirement System and Certain Other Public Retirement Systems by Actuary Retained by City of Austin

SECTION 1. Government Code Title 8, Subtitle A, Chapter 802, Subchapter B is amended by adding Section 802.1012 to read as follows:

Sec. 802.1012. AUDITS OF ACTUARIAL VALUATIONS, STUDIES, AND REPORTS. (a) In this section, "governmental entity" means a unit of government that is the employer of active members of a public retirement system.

(b) Except as provided by Subsection (k), this section applies only to a public retirement system with total assets the book value of which, as of the last day of the preceding fiscal year, is at least \$100 million.

(c) Every five years, the actuarial valuations, studies, and reports of a public retirement system most recently prepared for the retirement system as required by Section 802.101 or other law under this title or under Title 109, Revised Statutes, must be audited by an independent actuary who:

(1) is engaged for the purpose of the audit by the governmental entity; and

(2) has the credentials required for an actuary under Section 802.101(d).

(d) Before beginning an audit under this section, the governmental entity and the independent actuary must agree in writing to maintain the confidentiality of any nonpublic

information provided by the public retirement system for the audit.

(e) Before beginning an audit under this section, the independent actuary must meet with the manager of the pension fund for the public retirement system to discuss the appropriate assumptions to use in conducting the audit.

(f) Not later than the 30th day after completing the audit under Subsection (c), the independent actuary shall submit to the public retirement system for purposes of discussion and clarification a preliminary draft of the audit report that is substantially complete.

(g) The independent actuary shall:

(1) discuss the preliminary draft of the audit report with the governing body of the public retirement system; and

(2) request in writing that the retirement system, on or before the 30th day after the date of receiving the preliminary draft, submit to the independent actuary any response that the retirement system wants to accompany the final audit report.

(h) The independent actuary shall submit to the governmental entity the final audit report that includes the audit results and any response received from the public retirement system;

(1) not earlier than the 31st day after the date on which the preliminary draft is submitted to the retirement system; and

(2) not later than the 60th day after the date on which the preliminary draft is submitted to the retirement system.

(i) At the first regularly scheduled open meeting after receiving the final audit report, the governing body of the governmental entity shall:

(1) include on the posted agenda for the meeting the presentation of the audit results;

(2) present the final audit report and any response from the public retirement system; and

(3) provide printed copies of the final audit report and the response from the public retirement system for individuals attending the meeting.

(j) The governmental entity shall:

(1) maintain a copy of the final audit report at its main office for public inspection;

(2) submit a copy of the final audit report to the public retirement system and the State Pension Review Board not later than the 30th day after the date the final audit report is received by the governmental entity; and

(3) pay all costs associated with conducting the audit and preparing and distributing the report under this section.

(k) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

SECTION 2. The first audit required under Section 802.1012, Government Code, as added by this Act:

(1) shall be conducted not later than September 1, 2008; and

(2) must include an audit of each actuarial valuation, study and report of the public retirement system that was prepared for that retirement system in the preceding five years.

SECTION 3. This Act takes effect September 1, 2009.

3. Act Relating to Correcting Errors in the Distribution of Benefits by a Public Retirement System

SECTION 1. Section 802.1024, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described in Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

(1) the amount of the correction in overpayment or underpayment;

(2) how the amount of the correction was calculated;

(3) a brief explanation of the reason for the correction;

(4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;

- (5) instructions for filing a written complaint; and
- (6) a payment plan option if no future payments are

due.

(a-2) Except as provided by this subsection and Section 802.1025, the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section 802.1025, not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

- (1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the system discovers or discovered the overpayment;

- (2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and

(3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025.

SECTION 2. Subchapter B, Chapter 802, Government Code, is amended by adding Section 802.1025 to read as follows:

SECTION 802.1025. COMPLAINT PROCEDURE. (a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
- (2) a brief explanation of the reason for the modification; and
- (3) a payment plan option if no future payments are due.

(c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section 802.1024 until:

(1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or

(2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).

(d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.

(e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.

SECTION 3. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies to an underpayment or overpayment of benefits by a public retirement

system regardless of whether the underpayment or overpayment was made before, on, or after the effective date of this Act.

(b) The change in law made by this Act does not apply to a correction, adjustment, or recovery of an overpayment that commenced before the effective date of this Act or an overpayment that was resolved by an agreement made before the effective date of this Act between a public retirement system and the recipient of the overpayment. A correction, adjustment, or recovery of an overpayment that commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect June 15, 2007.