

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 717*

Short Title: Charlotte Firefighters' Retirement.

(Local)

Sponsors: Representatives Alexander; Bridgeman, Cunningham, Earle, Easterling, Gulley, Rayfield, and C. Wilson.

Referred to: Pensions and Retirement.

March 30, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW ESTABLISHING THE CHARLOTTE FIREMEN'S
3 RETIREMENT SYSTEM.

4 The General Assembly of North Carolina enacts:

5 Section 1. Section 1 of Chapter 830 of the 1991 Session Laws, as amended by
6 Chapter 171 of the 1995 Session Laws and Chapter 640 of the 1993 Session Laws, which
7 rewrote Chapter 926 of the 1947 Session Laws, as amended, reads as rewritten:

8 "Section 1. Chapter 926, 1947 Session Laws, as amended, is rewritten to read:
9

10 **TITLE I. PREFACE.**

11
12 Section 1. **Introduction.** The Charlotte Firemen's Retirement System
13 heretofore established pursuant to the provisions of Chapter 926 of the 1947 Session
14 Laws, as amended, is hereby continued and shall hereafter be known as the Charlotte
15 Firefighters' Retirement System. The purpose of the Charlotte Firefighters' Retirement
16 System shall be to provide retirement, disability and survivor benefits for the uniformed
17 employees of the Charlotte Fire Department who are entitled thereto under the provisions
18 of this act. This act shall be officially known and may be referred to as the Charlotte
19 Firefighters' Retirement System Act.

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

3 (1) 'Accrued Benefit' means the amount of monthly retirement benefits
4 earned by a Member computed, as of any date, on his Final Average
5 Salary and Membership Service Credit as of such date. In no event
6 shall the Accrued Benefit be less than the Accrued Benefit as of June
7 30, 1986.

8 (1a) 'Act' means Chapter 926 of the 1947 Session Laws, as amended.

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

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

22 (3a) 'Adjustment Factor' means the cost of living adjustment factor
23 prescribed by the Secretary of the Treasury under section 415(d) of the
24 Code for years beginning after December 31, 1987, applied to those
25 items and in the manner the Secretary prescribes.

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

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

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

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

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

41 (8a) 'Code' means the Internal Revenue Code of 1986, as amended.

42 (9) 'Compensation' means the remuneration earned by a Member for
43 services performed as an employee of the Charlotte Fire Department

1 and for which contributions are made to the System. Compensation
2 shall include compensation received during the applicable period by the
3 Member from the City for services performed as an employee of the
4 Charlotte Fire Department during the taxable year ending with or within
5 the Plan Year that is required to be reported as wages on the Member's
6 Form W-2. Compensation also includes compensation realized during
7 the applicable period that is not currently includable in the Member's
8 gross income by reason of the application of sections 125, 401(k),
9 402(a)(8), 402 (h)(1)(B), 403(b), or 457 of the Code. For the purpose of
10 calculating a Member's Final Average Salary, any lump sum payments
11 for which contributions were made to the System, such as longevity pay
12 and bonus payments, and received by said Member within two
13 consecutive years of Membership Service shall be apportioned over the
14 previous Membership Service for which the payment(s) was earned.

15 (9a) 'Death Benefit Recipient' means any person who is in receipt of benefits
16 payable as specified in Section 21.

17 (10) 'Effective Date' of this amended and restated act means July 1, ~~1989,~~
18 1999, unless otherwise specified herein.

19 (11) 'Final Average Salary' means the monthly average Compensation
20 received by a Member during any two consecutive years of Membership
21 Service which produces the highest average and is contained within the
22 Member's last five years of Membership Service. If a Member has less
23 than two years of Membership Service, his Final Average Salary shall
24 mean the monthly average Compensation for his total Membership
25 Service. Effective July 1, 1989, if the Member's monthly benefit, as
26 calculated pursuant to Section 17(a) of this act, exceeds one hundred
27 percent (100%) of his Final Average Salary, as defined by this
28 subdivision, then 'Final Average Salary' means the monthly average
29 Compensation received by a Member during any three consecutive
30 years of Membership Service during which the Member was an active
31 Member of the Retirement System and had the greatest aggregate
32 Compensation from the City. If a Member has fewer than three years of
33 Membership Service, his Final Average Salary shall mean the monthly
34 average Compensation for his total Membership Service.

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

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

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

- 1 (15) 'Member' means an employee of the Charlotte Fire Department who is
2 subject to the provisions of the Civil Service Act contained in Chapter
3 333 of the 1969 Session Laws as amended, and, in addition, shall
4 include the chief of the fire department where the chief was subject to
5 the provisions of the Civil Service Act immediately prior to being
6 appointed fire chief, and any probationary employee or officer of the
7 fire department under the Civil Service Act.
- 8 (16) 'Membership Service Credit' or 'Membership Service' means the amount
9 of service credited to a Member as provided in this act to determine
10 what, if any, benefits are due him.
- 11 (17) 'Participant' means any Member, Retiree, Beneficiary in receipt of
12 benefits or a former Member with a deferred Accrued Benefit.
- 13 (17a) 'Qualified Participant' means a Participant who is in a defined benefit
14 plan that is maintained by a State or a political subdivision thereof; and
15 a. Who has at least 15 years of Membership Service Credit as a
16 full-time employee of any police department or fire department
17 that is organized and operated by the State or a political
18 subdivision, that maintains such a defined benefit plan; or
19 b. Who is a member of the armed forces of the United States.
- 20 (18) 'Retiree' means any person who retires with a retirement benefit payable
21 by the System.
- 22 (19) 'Retirement System' or 'System' means the Charlotte Firefighters'
23 Retirement System.
- 24 (20) 'Total Contributions' means the sum of the amounts paid by or on behalf
25 of a Member and credited to his individual account by the System.
- 26 (20a) 'Trustee' means any individual member of the Board of Trustees of the
27 Charlotte Firefighters' Retirement System, as specified in Section 29 of
28 this act.
- 29 (21) 'Year,' 'Plan Year,' or 'Limitation Year' means the twelve months from
30 July 1 through June 30.

31 TITLE II. MEMBERSHIP SERVICE CREDIT.

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

40 Sec. 4. **Periods of Workers' Compensation & Accident and Sickness,**
41 **Family Medical Leave Act, and Long-Term Disability Benefits.** Membership Service
42 Credit shall be credited to a Member for any periods of workers' compensation, accident
43 and sickness, Family Medical Leave Act, or long-term disability benefits for which said

1 Member contributes to the Charlotte Firefighters' Retirement System an amount equal to
2 the Compensation the Member would have earned multiplied by the sum of the then
3 current social security contribution rate ~~and plus~~ five percent (5%). Such contributions
4 must be made within a 12 calendar month period from and after the date the Member
5 returns to employment with the Charlotte Fire Department and prior to the Member's
6 termination of membership or retirement.

7 **Sec. 5. Reinstatement of Membership Service Credit Previously Forfeited.**
8 Membership Service Credit shall be credited for previous Membership Service for a
9 Member who is reemployed by the Charlotte Fire Department within five years of the
10 termination date of his previous employment, and provided the Member has not received
11 reimbursement of his ~~Total Contributions~~ contributions pursuant to the provisions of this
12 act. ~~Any Member who is reemployed by the Charlotte Fire Department before January 1, 1959,~~
13 ~~shall receive Membership Service Credit for all previous membership employment in said~~
14 ~~department. Any Member who was reemployed by the Charlotte Fire Department after~~
15 ~~December 31, 1958, and has previously received reimbursement of his Total Contributions~~
16 ~~pursuant to the provisions of this act, shall receive no Membership Service Credit for any~~
17 ~~previous membership employment with the Charlotte Fire Department.~~

18 **Sec. 6. Return from Active Military Duty.** Membership Service Credit shall
19 be credited to any Member who entered the Armed Forces of the United States of
20 America during World War I, World War II, the Korean War, any period of national
21 emergency conditions, or entered the Armed Forces at any time through the operation of
22 the compulsory military service law of the United States of America, upon the return to
23 membership employment with the Charlotte Fire Department. Such Membership Service
24 Credit shall include the period of active military service and any period after discharge or
25 release from active duty from the Armed Forces for which his reemployment rights are
26 guaranteed by law unless otherwise specified in this act.

27 **Sec. 7. Purchase of Membership Service Credit for Prior Active Military**
28 **Duty.** ~~Membership Service Credit may be purchased for credit upon the completion of~~
29 ~~ten or more years of Membership Service Credit. Effective July 1, 1988, the purchase of~~
30 ~~such~~ Effective July 1, 1999, Membership Service Credit must occur before for prior
31 active military duty may be purchased upon the completion of 13 five years of
32 Membership Service Credit, or by October 7, 1990, whichever is later, prior to
33 termination of membership or retirement, Credit by any Member who served on active
34 duty in the Armed Forces of the United States of America prior to his employment with
35 the Charlotte Fire Department. Such Membership Credit shall be purchased by the
36 Member before termination of membership or retirement. The amount of Membership
37 Service Credit ~~to be credited to that may be purchased by~~ a Member will be equal to the
38 actual active military duty by the Member not to exceed five years and shall be credited
39 upon the payment of the required contributions as determined by the Administrator,
40 provided that the Membership Service to be so credited shall not be credited in any other
41 retirement system, except the national guard or any reserve component of the Armed
42 Forces of the United States. The required contributions shall be an amount equal to the
43 annualized Compensation rate the Member earned when he first entered membership in

1 the Retirement System, multiplied by the sum of the Member and the City of Charlotte
2 contribution rates in effect at the time when he first entered membership in the
3 Retirement System, increased by five percent (5%) compounded per annum from the date
4 of membership to the date of the payment of the required contributions and multiplied by
5 the number of years and days of Membership Service to be credited.

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

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

18 19 **TITLE III. TERMINATION OF MEMBERSHIP.**

20 21 **Sec. 10. Members With Less Than Five Years of Membership Service Credit.**

22 (a) If a Member with less than five years of Membership Service Credit with this
23 Retirement System shall cease employment with the Charlotte Fire Department, whether
24 voluntary or involuntary, said former Member shall thereupon cease membership and
25 shall be entitled to reimbursement of the ~~Total Contributions made by or on his behalf to the~~
26 ~~Retirement System, excluding contributions made by the Member.~~ The former Member
27 shall not be entitled to any contributions made on the former Member's behalf by the City
28 of Charlotte under the provisions of Section 25 of this act without interest or to any
29 interest which has accrued on his contributions or any contributions made on the
30 Member's behalf. A former Member desiring reimbursement of said contributions must
31 complete and file the form 'Application for Refund of Accumulated Contributions' with
32 the Administrator within five years of the termination date of his employment. Should a
33 former Member fail to complete and file said form with the Administrator within such
34 five years, the former Member shall receive reimbursement of said ~~contributions.~~
35 contributions as provided in this act.

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

1 **Sec. 11. Members With ~~Five~~ Ten or More Years of Membership Service Credit.**

2 (a) ~~Effective July 1, 1986, if a Member with ten or more years of Membership~~
3 ~~Service Credit with this Retirement System shall cease employment with the Charlotte~~
4 ~~Fire Department, whether voluntary or involuntary, said Member shall receive his~~
5 ~~Accrued Benefit and defer such benefit until the Participant reaches age 60 years.~~
6 ~~Effective July 1, 1989, if a Member with five or more years of Membership Service~~
7 ~~Credit with this Retirement System ceases employment with the Charlotte Fire~~
8 ~~Department, whether voluntarily or involuntarily, the Member shall receive his Accrued~~
9 ~~Benefit and defer this benefit until the Participant reaches 60 years of age. The Accrued~~
10 ~~Benefit shall be calculated pursuant to the provisions of Sections 15 and 17 of this act in~~
11 ~~effect on the last day of work by said Participant. If such Participant dies before applying~~
12 ~~for his deferred benefits and attaining age 60 years, reimbursement of the Participant's~~
13 ~~contributions may be accomplished in the same manner and in all respects as in Section~~
14 ~~10 of this act.~~

15 (b) As an alternative to the provisions of subsection (a) of this section, if a
16 Member with five or more years of Membership Service Credit with this Retirement
17 System shall cease employment with the Charlotte Fire Department, whether voluntary or
18 involuntary, said Member shall thereupon cease membership and may elect to receive
19 reimbursement of his contributions in the same manner and in all respects as in Section
20 10 of this act.

21 **Sec. 12. Failure to Return From Active Military Duty.** Should any
22 Member of this Retirement System who entered the Armed Forces of the United States of
23 America pursuant to the provisions of Section 6 of this act fail to return to employment
24 with the Charlotte Fire Department within the period for which his reemployment rights
25 are guaranteed by law, said Member shall thereupon cease membership and shall be
26 entitled to a deferred benefit or reimbursement of his contributions in the same manner
27 and in all respects as provided for in Section 10 or 11 of this act, whichever is applicable.

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

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

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

38 (b) Definitions.

39 (1) Eligible rollover distribution. An eligible rollover distribution is any
40 distribution of all or any portion of the balance to the credit of the
41 distributee, except that an eligible rollover distribution does not include:
42 any distribution that is one of a series of substantially equal periodic
43 payments (not less frequently than annually) made for the life (or life

1 1989, age 60 years or older and 5 or more, but fewer than 25
2 years of Membership Service Credit.

3 (2) Upon a Member's service retirement, he shall be paid a benefit as
4 provided in Section 17 of this act.

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

6 Sec. 17. (a) ~~Effective July 1, 1986, 1998, upon retirement pursuant to the~~
7 ~~provisions of Sections 15 or 16, a Member shall receive a monthly benefit equal to two~~
8 ~~and four-tenths percent (2.4%) of his Final Average Salary multiplied by his Membership~~
9 ~~Service Credit, not to exceed one hundred percent (100%) of Final Average Salary, but~~
10 ~~not less than five hundred dollars (\$500.00) per month. Effective July 1, 1989, upon~~
11 ~~retirement pursuant to the provisions of Section 15, Section 15 of this act, a Member shall~~
12 ~~receive a monthly benefit equal to two and six-tenths percent (2.6%) of his Final Average~~
13 ~~Salary multiplied by his Membership Service Credit, not to exceed one hundred percent~~
14 ~~(100%) of the Final Average Salary, but not less than five hundred dollars (\$500.00).~~
15 ~~Effective July 1, 1995, upon retirement pursuant to the provisions of Section 15 of this~~
16 ~~act, a Member shall receive a monthly benefit equal to two and six-tenths percent (2.6%)~~
17 ~~of his Final Average Salary multiplied by his Membership Service Credit, not to exceed~~
18 ~~one hundred percent (100%) of his Final Average Salary, but not less than eight hundred~~
19 ~~thirty-three dollars and thirty-three cents (\$833.33). Salary limits imposed by section 415~~
20 ~~of the Internal Revenue Code, as amended, but not less than nine hundred two dollars and~~
21 ~~seventy-five cents (\$902.75). The benefit payable pursuant to this subsection shall be~~
22 ~~referred to as the basic benefit.~~

23 (b) Prior to his retirement, but not thereafter, a Member may elect to receive an
24 Actuarial Equivalent, computed as of the effective date of his retirement, of his basic
25 benefit from subsection (a) of this section in a reduced monthly amount payable
26 throughout his life, and nominate a Beneficiary in accordance with the provisions of
27 option 1, 2, 3, 4, 5 or 6 as set forth below. Actuarial Equivalent for all Members retiring
28 prior to July 1, 1987, shall be computed in accordance with the Group Annuity Table for
29 1951 with interest at four percent (4%). Actuarial Equivalent for all Members retiring
30 after June 30, 1987, shall be computed in accordance with the Unisex Mortality Table for
31 1984 set forward one year in age with interest at six percent (6%). If a Member does not
32 have an option election in force at the time of his retirement, his monthly benefit shall be
33 paid as the basic benefit.

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

40 (d) Option 2. 100% Joint and Survivor Benefit. A Retiree shall receive a reduced
41 basic benefit payable monthly throughout his life and upon his death his reduced monthly
42 benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree

1 shall have nominated by written designation duly executed and filed with the Board of
2 ~~Trustees.~~ Trustees prior to retirement but not thereafter.

3 (e) Option 3. 75% Joint and Survivor Benefit. A Retiree shall receive a reduced
4 basic benefit payable monthly throughout his life and upon his death seventy-five percent
5 (75%) of his reduced monthly benefit shall continue throughout the life of such
6 Beneficiary, if living, as the Retiree shall have nominated by written designation duly
7 executed and filed with the Board of ~~Trustees.~~ Trustees prior to retirement but not
8 thereafter.

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

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

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

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

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

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

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

5 (b) An 'Application for Disability Retirement in the Line of Duty' shall be
6 administered pursuant to ~~rules and regulations~~ the Disability Regulations adopted by the
7 Board of Trustees from time to time and approved by the City of Charlotte and
8 administered in a uniform and nondiscriminatory manner. The Administrator shall
9 request the Board of Trustees to conduct a hearing on the Application for Disability
10 Retirement in the Line of Duty pursuant to the provisions of the Disability Regulations.
11 The Member or any person filing on the Member's behalf or the Administrator may
12 appeal from any order of the Board to the Superior Court of Mecklenburg County, within
13 10 days of the order. The appeal to the Superior Court shall be upon the record of the
14 proceeding before the Board at the hearing.

15 (c) Effective July 1, ~~1986, 1999~~, upon retirement pursuant to the provisions of this
16 section, a Member shall receive a monthly benefit equal to ~~seventy-two percent (72%)~~ of his
17 ~~Final Average Salary, but not less than five hundred dollars (\$500.00) per month.~~ Effective July
18 ~~1, 1987, upon retirement pursuant to the provisions of this section, a Member shall receive a~~
19 ~~monthly benefit equal to the greater of seventy-two percent (72%) or two and four-tenths~~
20 ~~percent (2.4%)~~ seventy-eight percent (78%) or two and six-tenths percent (2.6%)
21 multiplied by his Membership Service, of his Service Credit, not to exceed the Final
22 Average Salary, not to exceed one hundred percent (100%) of his Final Average Salary, Salary
23 limits imposed by section 415 of the Internal Revenue Code, as amended, but not less
24 than five hundred dollars (\$500.00) nine hundred two dollars and seventy-five cents
25 (\$902.75) per month. Effective July 1, 1988, prior to his retirement pursuant to the
26 provisions of this Section, but not thereafter, a Member may elect to receive an Actuarial
27 Equivalent, computed as of the effective date of his retirement, of his monthly amount
28 payable throughout his life, and nominate a Beneficiary in accordance with the provisions
29 of the Option 5, Fifty Percent (50%) Joint and Survivor Benefit, as set forth in subsection
30 (g) of Section 17. The Actuarial Equivalent for all Members retiring pursuant to this
31 Section shall be computed in accordance with the Unisex Mortality Table for 1984 set
32 forward one year in age, with interest at six percent (6%). Benefits payable under this
33 Section shall be effective on the date of approval by the Board of Trustees or upon
34 exhaustion of workers' compensation benefits, whichever is later. Also, disability
35 retirement benefits payable under this Section may be adjusted by the disability
36 retirement regulations adopted pursuant to the requirements contained in subsection (b)
37 of this Section. A Retiree receiving disability retirement benefits shall revert to a service
38 retirement as specified in Section 15 and shall receive the greater of such disability
39 retirement benefits or his Accrued Benefit as determined as of the last date of active
40 employment with the Charlotte Fire Department at such time as the Retiree's attained age
41 and Membership Service Credit meet the requirements for a service retirement.

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

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

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

15 (c) Effective July 1, ~~1986, 1999,~~ upon retirement pursuant to the provisions of this
16 section, a Member shall receive a monthly benefit equal to ~~thirty-six percent (36%)~~ thirty-
17 nine percent (39%) of his Final Average Salary, plus ~~one and eight-tenths percent (1.8%)~~
18 one and ninety-five hundredths percent (1.95%) of his Final Average Salary multiplied
19 by the Membership Service Credit in excess of 10 years, not to exceed ~~one hundred percent~~
20 (100%) of his Final Average Salary, but not less than ~~five hundred dollars (\$500.00)~~ the Final
21 Average Salary limits imposed by section 415 of the Internal Revenue Code, as amended,
22 but not less than nine hundred two dollars and seventy-five cents (\$902.75) per month.
23 Effective July 1, 1988, prior to his retirement pursuant to the provisions of this section,
24 but not thereafter, a Member may elect to receive an Actuarial Equivalent, computed as
25 of the effective date of his retirement, of his monthly amount payable throughout his life,
26 and nominate a Beneficiary in accordance with the provisions of the Option 5, Fifty
27 Percent (50%) Joint and Survivor Benefit, as set forth in subsection (g) of Section 17.
28 The Actuarial Equivalent for all Members retiring pursuant to this section shall be
29 computed in accordance with the Unisex Mortality Table for 1984 set forward one year in
30 age, with interest at six percent (6%). Benefits payable under this section shall be
31 effective on the date of approval by the Board of Trustees. Also, disability retirement
32 benefits payable under this Section may be adjusted by the disability retirement
33 regulations adopted pursuant to the requirements contained in subsection (b) of this
34 Section. A Retiree receiving disability retirement benefits shall revert to a service
35 retirement as specified in Section 15 and shall receive the greater of such disability
36 retirement benefits or his Accrued Benefit as determined as of the last date of active
37 employment with the Charlotte Fire Department at such time as the Retiree's attained age
38 and Membership Service Credit meet the requirements for a service retirement.

39 Sec. 21. (a) In the event of the death of any Member of the System prior to his
40 effective date of retirement pursuant to the provisions of Sections 15, 16, 18, 19, or 20 of
41 this act, his Designated Beneficiary(s) on file with the Retirement System, or his personal
42 representative in the absence of any Designated Beneficiary, shall be entitled to
43 reimbursement of the Total Contributions by him or on his behalf and contributions by

1 City of Charlotte to the ~~System;~~ System on his behalf; plus, two and five-tenths percent
2 (2.5%) interest compounded annually on the contribution balance at the beginning of
3 each Plan Year in which the Participant contributed or in which contributions were made
4 on his behalf. However, the two and five-tenths percent (2.5%) interest shall not apply to
5 death benefits occurring before July 1, 1986. Such Beneficiary(s) or personal
6 representative must complete and file the form 'Application for Survivor Death Benefits'
7 with the Administrator to receive reimbursement. As an option, a Beneficiary may elect
8 to receive an annuity equal to and in lieu of a lump sum distribution by so designating on
9 the above form. Effective July 1, 1989, as an option, a surviving spouse of a deceased
10 Member who was eligible for a service or early retirement benefit on the date preceding
11 death may elect to receive an Actuarial Equivalent computed as of the date preceding
12 death in the same manner as if the deceased member had retired and elected a reduced
13 monthly amount payable throughout his life, and nominated the surviving spouse as his
14 beneficiary in accordance with the provisions of Option 4, Sixty-Six and Two-Thirds
15 Percent (66 2/3%) Joint and Survivor benefit, as set forth in subsection (f) of Section 17.
16 The Actuarial Equivalent for all benefits payable pursuant to this section shall be
17 computed in accordance with the Unisex Mortality Table for 1984 set forward one year in
18 age, with interest at six percent (6%).

19 (b) In the event of the death of a Retiree of this System before he has received
20 monthly benefit payments equal to the present value on the effective date of retirement of
21 the Total Contributions by him or on his behalf and contributions by the City of Charlotte
22 to the ~~System;~~ System on his behalf; plus, two and five-tenths percent (2.5%) interest
23 compounded annually on the contribution balance at the beginning of each Plan Year in
24 which the Participant contributed or in which contributions were made on his behalf and
25 provided a monthly benefit is not payable in accordance with Section 17, the Designated
26 Beneficiary(s) or estate of the retiree shall be entitled to an amount equal to the difference
27 between such contributions, plus interest, and the sum of the monthly benefit payments
28 received by the retiree. However, the two and five-tenths percent (2.5%) interest shall
29 not apply to death benefits occurring before July 1, 1986. Such Beneficiary(s) or
30 personal representative must complete and file the form 'Application for Survivor Death
31 Benefits' with the Administrator to receive reimbursement.

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

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

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

40 (b) Effective July 1, 1989, the Board of Trustees shall make an annual bonus
41 payment in the month of January following an annual actuarial valuation when the
42 actuary determines that the actual payroll contributions exceed the required contributions
43 adjusted for any actuarial gains and losses that may have occurred during the preceding

1 year. The lesser of fifty percent (50%) of the excess amount determined by the actuary or the aggregate monthly benefit of the Retirees eligible for the bonus shall be distributed. A Retiree who has been retired for at least one year as of December 31, preceding distribution of the bonus, shall receive a bonus that is determined by the Administrator as proportional of the Retiree's monthly benefit to the aggregate monthly benefits of all Retirees eligible for the bonus.

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

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

18 19 TITLE V. METHOD OF FINANCING. 20

21 Sec. 24. **Member Contributions.** Each Member shall contribute to the
22 Charlotte Firefighters' Retirement System and the City of Charlotte shall cause to be
23 deducted from each and every payroll of such Member, an amount equal to the Member's
24 Compensation multiplied by the sum of the then current social security contribution rate
25 ~~and plus~~ five percent (5%).

26 Notwithstanding any provision of this act to the contrary, effective July 1, 1983, the
27 City of Charlotte, as an employer, pursuant to the provisions of Section 414(h)(2) of the
28 Internal Revenue Code of 1986, as amended from time to time, may elect to pick up and
29 pay the contributions that would be payable by the Members of the Retirement System
30 under this section with respect to the service of the Members after June 30, 1983.

31 The Members' contributions picked up by the City of Charlotte shall be designated for
32 all purposes of the Retirement System as Member contributions, except for the
33 determination of tax upon a distribution from the Retirement System. These
34 contributions shall be credited to the fund created by this act accumulated within the fund
35 in a Member's account that shall be separately established for the purpose of accounting
36 for picked-up contributions. Member contributions picked up by the City of Charlotte
37 shall be payable from the same source of funds used for the payment of Compensation to
38 a Member. A deduction shall be made from a Member's Compensation equal to the
39 amount of his contributions picked up by the City of Charlotte. This deduction, however,
40 shall not reduce his Compensation for purposes of the Retirement System. Picked-up
41 contributions shall be transmitted to the Retirement System.

42 Sec. 25. **City of Charlotte Contributions.** (a) The City of Charlotte shall
43 contribute to the Charlotte Firefighters' Retirement System an amount equal to the

1 Member's Compensation multiplied by the sum of the then current social security
2 contribution rate ~~and plus~~ five percent (5%), for each and every payroll of such Member.

3 (b) Should any Member of this Retirement System enter the Armed Forces of the
4 United States of America, the City of Charlotte shall contribute to the Charlotte
5 Firefighters' Retirement System for each and every payroll an amount equal to the
6 Compensation such Member would have earned based upon the last pay grade with the
7 Fire Department multiplied by the contribution rate established pursuant to subsection (a)
8 of this section for a period not to exceed the lesser of the Member's actual period of
9 active military duty or five years.

10 (c) Should any Member of the Retirement System enter the Armed Forces of the
11 United States of America, upon approval by the City Council, the City of Charlotte by
12 and on behalf of such Member may contribute an amount equal to, but not to exceed, the
13 Compensation such Member would have earned based upon the last pay grade with the
14 Fire Department multiplied by the contribution rate established pursuant to Section 24 of
15 this act. Any contributions by and on behalf of such Member shall inure to the benefit of
16 such Member as though made by such Member under the provisions of this act unless
17 otherwise specified in this act.

18 (c1) Should any Member of the Retirement System contribute an amount pursuant
19 to Section 4 for the purpose of receiving Membership Service Credit for any period of
20 benefits under the federal Family Medical Leave Act, the City of Charlotte shall
21 contribute to the Charlotte Firefighters' Retirement System an amount equal to the
22 Compensation that Member would have earned multiplied by the then current social
23 security contribution rate ~~and plus~~ five percent (5%).

24 (d) In addition thereto, the City Council may, within its discretion and upon the
25 recommendation of the Board of Trustees, appropriate funds necessary to provide a cost
26 of living increase to the Retirees of the System.

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

30 31 **TITLE VI. ADMINISTRATION BY BOARD OF TRUSTEES.**

32
33 Sec. 27. **General.** The Board of Trustees heretofore established is hereby
34 continued. The general administration, management and responsibility for the proper
35 operation of the Retirement System and for construing and making effective the
36 provisions of this act are vested in the Board of Trustees.

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

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

8 **Sec. 29. Board of Trustees.** (a) The Board of Trustees shall consist of 11
9 Trustees, as follows: (i) City Manager, or some other City department head or employee
10 as duly designated by the City Manager; (ii) City Finance Director, or a deputy finance
11 director as duly designated by the City Finance Director; (iii) City Treasurer; (iv) a
12 Chairman of the Board and three Trustees to represent the public and who are residents of
13 Mecklenburg County and who are appointed by the Resident Judge of the Superior Court
14 of Mecklenburg County and who shall hold office for a period of three years or until their
15 successor shall have been appointed and been qualified; (v) three Members of the
16 Retirement System to ~~System~~, each of whom shall be elected by a vote of the Members of
17 the Retirement System for a term of three years, pursuant to the Charlotte Firefighters'
18 Retirement System Election Regulation; and (vi) one Retiree of the Retirement System to
19 be elected by a majority vote of the retirees of the Retirement System for a term of three
20 years, pursuant to the Charlotte Firefighters' Retirement System Election Regulation.
21 The terms of office for elected Member Trustees and, effective July 1, 1989, for
22 appointed Trustees, shall be graduated so that ~~only one Trustee's term~~ no more than three
23 Trustees' terms shall expire each year. Any Member shall be eligible to succeed himself
24 as a Trustee.

25 (b) Conflict of Interest. No trustee, chairman, or other officer or employee of the
26 Charlotte Firefighters' Retirement System shall directly or indirectly become an
27 independent contractor for work done by, or on behalf of, the System, or become directly
28 or indirectly financially interested in, or receive profits from any purchase, contract, or
29 association by or with the System.

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

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

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

3 (a) In the event that an elected Trustee of the Board shall make application for
4 benefits under this act he shall first submit a written notice to the Chairman of the Board
5 disqualifying himself from his trusteeship.

6 (b) A vacancy shall be deemed to have occurred if a Trustee or the Chairman fails
7 to attend any three consecutive meetings of the Board without prior notification unless
8 excused for cause by the Trustees attending said meetings.

9 (c) A vacancy shall be deemed to have occurred if a Trustee or the Chairman
10 should die.

11 (c1) A vacancy shall be deemed to have occurred if a Trustee or the Chairman
12 should fail to satisfy the classification requirements in Subsection 29(a) of this act.

13 (d) If a Trustee shall deem himself incapable of fulfilling his Board obligations for
14 any reason or if any condition exists that renders the Trustee disqualified, the Trustee
15 shall submit a written notice to the Chairman disqualifying himself from his trusteeship.
16 If the Chairman shall deem himself to be disqualified for any of the foregoing reasons, he
17 shall submit written notice to the Resident Judge of the Superior Court of Mecklenburg
18 County.

19 (e) If a vacancy shall occur pursuant to the provisions of subsections (a) through
20 (d) of this section, the vacancy shall be filled within 90 days after the date of the vacancy,
21 for the unexpired portion of the term, for the same classification and in the same manner
22 as the position was previously filled.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (a1) **Actuary.** The Board of Trustees shall annually request the City to employ a
33 qualified Actuary to perform such studies and evaluations of the Charlotte Firefighters'
34 Retirement System as may be necessary and/or desirable by the Board or City in
35 connection with the administration of the System. Within the meaning of this subsection,
36 a qualified Actuary shall be an Actuary who has been enrolled by the Joint Board for the
37 Enrollment of Actuaries and shall be an associate, member, or fellow of the conference of
38 Actuaries in Public Practice or a member of the American Academy of Actuaries.

39 (b) **Medical Board.** The Board of Trustees shall appoint a Medical Board to be
40 composed of ~~three~~ one or more physicians to serve at the pleasure of the Board. The
41 Medical Board shall arrange for and evaluate all medical examinations required under
42 provisions of this act. The Medical Board shall also investigate and evaluate all medical
43 evidence, statements, and certificates submitted by and on behalf of a Member in

1 connection with an application for disability retirement. The Medical Board shall render
2 its conclusions and recommendations in writing to the Board of Trustees in accordance
3 with the provisions of this act.

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

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

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

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

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

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

28 Sec. 39. **Authority of City of Charlotte to Make Changes with Respect to**
29 **the Retirement System.** Upon the recommendation of the Board of Trustees as provided
30 in Section 38 of this act, the City may, within its discretion, increase or decrease the rate
31 of contribution of the Members of the System and the City of Charlotte as may be
32 necessary for the proper operation of the Retirement System. Provided, however, that no
33 change shall reduce benefits being paid to Retirees of the System.

34 The City may deviate from the provisions of this act to the extent necessary to make
35 any changes in the System required by the Internal Revenue Service prior to its issuing a
36 favorable determination letter under Section 401(a) and Section 501(a) of the Internal
37 Revenue Code of 1986, as amended from time to time, and as required by the Internal
38 Revenue Service to maintain the qualified status of the Retirement System.

39 Sec. 40. **Authority of City of Charlotte to Recommend Changes to the**
40 **Retirement System.** ~~The~~ Subject to the approval of the Board of Trustees, the City may
41 recommend to the General Assembly of the State of North Carolina changes to the
42 Retirement System. All recommendations for changes must be actuarially sound and
43 must take into account the interest of all Participants in the System.

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

4 5 **TITLE VII. RECORD-KEEPING AND REPORTING REQUIREMENTS.** 6

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

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

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

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

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

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

30 31 **TITLE VIII. CUSTODY AND INVESTMENT OF SYSTEM ASSETS.** 32

33 Sec. 48. **Trusteeship of Funds.** The Board of Trustees of the Charlotte
34 Firefighters' Retirement System shall be the ~~Trustee~~-trustee of the funds and assets of the
35 System and shall have the power to take by gift, grant, devise or bequest any money, real
36 or personal property or other things of value, and hold, sell or invest the same.

37 Sec. 49. **Custody of System Assets.** The Treasurer of the Retirement System
38 shall be the custodian and responsible for the safekeeping of all funds paid into the
39 Charlotte Firefighters' Retirement System. The Treasurer shall deposit said funds in a
40 bank or banks as designated by the Board of Trustees. The Treasurer may, with Board
41 concurrence, use one or more nominees to facilitate transfer of the System's securities
42 and may hold the securities in safekeeping with the Federal Reserve System, a clearing
43 corporation, or a custodian bank which is a member of the Federal Reserve System. All

1 payments from said funds shall be authorized by the treasurer only upon the signed,
2 written request of the Administrator, or the Secretary of the Board in the absence of an
3 administrator. The Treasurer shall furnish such bond as shall be required by the Board of
4 Trustees and premium for said bond shall be paid out of the funds of the System.

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

- 11 (1) Discharge its duties solely in the interest of the Participants and the
12 Beneficiaries;
- 13 (2) Act with the same care, skill, prudence and diligence under the
14 circumstances then prevailing, that a prudent person acting in a similar
15 capacity and familiar with those matters would use in the conduct of a
16 similar enterprise with similar aims;
- 17 (3) Act with due regard for the management, reputation and stability of the
18 issuer and the character of the particular investments being considered;
- 19 (4) Make investments for the exclusive purpose of providing benefits to
20 Participants and Participants' Beneficiaries;
- 21 (5) Give appropriate consideration to those facts and circumstances the
22 Board of Trustees knows or should know are relevant to the particular
23 investment or investment course of action involved, including the role
24 the investment or investment course of action plays in that portion of the
25 System's investments for which the Board of Trustees has responsibility,
26 and shall act accordingly. Appropriate consideration shall include, but
27 is not limited to, a determination by the Board of Trustees that a
28 particular investment or investment course of action is reasonably
29 designed as part of the investments of the System to further the purposes
30 of the System taking into consideration the risk of loss and the
31 opportunity for gain or other return associated with the investment or
32 investment course of action; and consideration of the following factors
33 as they relate to the investment or the investment course of action:
 - 34 a. The diversification of the investments of the System;
 - 35 b. The liquidity and current return of the investments of the System
36 relative to the anticipated cash flow requirements of the System;
37 and
 - 38 c. The projected return of the investments of the System relative to
39 the funding objectives of the System;
- 40 (6) Give appropriate consideration to investments which would enhance the
41 general welfare of the City and its citizens if those investments offer the
42 safety and rate of return comparable to other investments held by the

1 System and available to the Board of Trustees at the time the investment
2 decision is made;

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

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

9 10 TITLE IX. RESTRICTIONS.

11
12 Sec. 51. **Restrictions.** Notwithstanding any provision of this act to the
13 contrary:

14 (1) No part of the funds contributed to the Retirement System pursuant to this
15 act, ~~System,~~ or the income thereon, may be used for, or diverted to,
16 purposes other than for the exclusive benefit of the Participants of the
17 Retirement System. ~~System as authorized by the provisions of this act.~~

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

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

26 (4) Notwithstanding any provision of the Retirement System to the
27 contrary, the maximum annual benefit payable in the form of a straight
28 life annuity from the Retirement System on behalf of a Participant,
29 when combined with any benefits from another qualified benefit plan
30 maintained by the City, shall not exceed the amount as provided in this
31 section. If the normal form of payment is other than a straight life
32 annuity or a qualified joint and survivor annuity, the amount so
33 determined hereunder shall be adjusted on an actuarially equivalent
34 basis to reflect such other payment form.

35 If a Participant has completed 10 or more years of service, the
36 maximum annual benefit payable in accordance with this subdivision
37 (4) shall be the lesser of a. ~~and~~ or b. below:

38 a. Ninety thousand dollars (\$90,000) (or, beginning January 1,
39 1988), such larger dollar amount as the Commissioner of Internal
40 Revenue may prescribe. Such amount shall be the maximum
41 annual benefit pursuant to this subdivision a. for that calendar
42 year and shall apply to the limitation year ending with or within
43 that calendar year.

1 b. The average annual ~~Compensation~~ compensation the Participant
2 received from the City during the three consecutive calendar
3 years which would produce the highest such average.

4 If a Participant has completed less than 10 years of service, the
5 maximum annual benefit payable in accordance with this subdivision
6 (4) shall be the lesser of subdivisions a. ~~and~~ or b. above, multiplied by
7 the ratio that the Participant's actual number of years of service bears to
8 10.

9 If the payment of a benefit to a Participant begins after he attains age 65,
10 the maximum benefit shall be actuarially adjusted to that amount that, if
11 paid in the same form and beginning at the same time as the benefit,
12 would be the actuarial equivalent of the maximum benefit that was
13 payable in the normal form of retirement allowance beginning on the
14 first day of the month coincident with or next following the Participant's
15 attainment of age 65.

16 If the payment of a benefit to a Participant begins before he attains age
17 62, the maximum benefit shall be actuarially adjusted to that amount
18 which, if paid in the same form and beginning at the same time as his
19 benefit, would be the actuarial equivalent of the maximum benefit
20 payable in the normal form of retirement allowance beginning on the
21 first day of the month coincident with or next following his attaining the
22 age of 62. The reductions required by this paragraph shall in no event
23 reduce the limitation in this subdivision a. below seventy-five thousand
24 dollars (\$75,000), if the benefit begins on or after the Participant's
25 attainment of age 55 or the actuarial equivalent of the seventy-five
26 thousand dollars (\$75,000) benefit limitation for age 55, if the benefit
27 begins prior to such age.

28 For purposes of this subdivision (4), if benefits begin before age 62, the
29 maximum annual benefit payable shall be adjusted by an interest rate
30 assumption not less than the greater of five percent (5%) or the rate
31 specified in the Retirement System. For purposes of this subdivision
32 (4), in addition to the above limitations, if a Participant is a Qualified
33 Participant as defined in Title 1, Section 2 (17a) of this act, the actuarial
34 reduction to the maximum benefit payable for benefits that begin prior
35 to the attainment of age 55 shall not be reduced to an amount less than
36 fifty thousand dollars (\$50,000). If payment of a Participant's benefit
37 begins after age 65, the maximum annual benefit payable shall be
38 adjusted by an interest rate assumption not greater than the lesser of five
39 percent (5%) or the rate specified in the Retirement System.

40 In the event a Participant is covered by one or more defined benefit
41 plans maintained by the City, all such plans shall be aggregated in
42 determining whether the maximum benefit limitations hereunder have
43 been met. Further, the maximum retirement allowance as noted above

1 may be decreased as determined necessary by the City to ensure that all
2 plans will remain qualified under the Internal Revenue Code of 1986, as
3 amended from time to time.

4 In addition to the other limitations set forth in the Retirement System
5 and notwithstanding any other provisions of the Retirement System, the
6 Accrued Benefit, including the right to any optional benefit provided in
7 the Retirement System (and all other defined benefit plans required to
8 be aggregated with the Retirement System under the provisions of
9 Section 415 of the Internal Revenue Code of 1986, as amended from
10 time to time), shall not increase to an amount in excess of the amount
11 permitted under Section 415 of the Internal Revenue Code of 1986, as
12 amended from time to time.

- 13 (5) Any benefit payable to a Participant pursuant to Section 4 of this act
14 shall commence not later than the April 1 immediately following the
15 calendar year in which the Participant attains age 70 1/2 or, if later, the
16 April 1 immediately following the calendar year in which the
17 Participant terminates service. Additionally, the distribution of any such
18 benefit must satisfy the minimum distribution requirements set forth in
19 this paragraph and must be consistent with Treasury Regulations, as of
20 the required beginning date. The minimum distribution for a calendar
21 year equals the Participant's nonforfeitable Accrued Benefit at the
22 beginning of the year divided by the Participant's life expectancy or, if
23 applicable, the joint and last survivor expectancy of the participant and
24 his Designated Beneficiary. The minimum distribution shall be
25 computed by using the life expectancy multiples under Treasury
26 Regulation 1.72-9. The minimum distribution for a calendar year
27 subsequent to the first calendar year for which a minimum distribution
28 is required may be computed by redetermining the applicable life
29 expectancy. However, there shall be no redetermination of the joint life
30 and last survivor expectancy of the Participant and a nonspouse
31 Designated Beneficiary in a manner which takes into account any
32 adjustment to a life expectancy other than the Participant's life
33 expectancy. A distribution to the Participant in the form of a life
34 annuity, joint and survivor annuity, or an annuity over a fixed period
35 will satisfy the minimum distribution requirements of this paragraph if
36 the method of distribution provides non-increasing payments or
37 otherwise satisfies Treasury Regulations. If the Participant dies after the
38 payment of his benefit has commenced, the death benefit provided by
39 this act shall be paid over a period which does not exceed the payment
40 period which had commenced. If a Participant dies prior to the time the
41 payment of his benefit commences, the death benefit provided by this
42 act shall be paid over a period not exceeding: (i) five years after the date
43 of the Participant's death; or (ii) if the Beneficiary is a Designated

1 Beneficiary, over the Designated Beneficiary's life or life expectancy.
2 No payment of benefit over a period described in (ii) shall be permitted,
3 unless the payment of such benefit to the Designated Beneficiary will
4 commence no later than one year after the date of the Participant's
5 death, or, if later, and the Designated Beneficiary is the Participant's
6 surviving spouse, the date the Participant would have attained age 70
7 1/2. The life expectancy multiples under Treasury Regulation 1.72-9
8 shall be used for purposes of applying this paragraph. The life
9 expectancy of a Participant's surviving spouse may be recalculated not
10 more frequently than annually, but the life expectancy of a nonspouse
11 Designated Beneficiary may not be recalculated after the
12 commencement of payment of benefits to the Designated Beneficiary.
13 Any amount paid to a Participant's child, which becomes payable to the
14 Participant's surviving spouse upon the child's attaining the age of
15 majority, shall be treated as paid to the Participant's surviving spouse for
16 purposes of applying this paragraph.

17 18 TITLE X. MISCELLANEOUS.

19
20 Sec. 52. **Liabilities of Trustees.** No member of the Board of Trustees shall be
21 personally liable by reason of his service as a Trustee for any acts performed by him as a
22 Trustee, except for malfeasance in office. Except for costs or expenses incurred because
23 of Trustee malfeasance, the System shall indemnify each Trustee for any and all costs or
24 expenses incurred by that Trustee as a result of acts performed as a Trustee, including all
25 insurance deductibles, copayments, and amounts exceeding insurance policy limits.

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

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

42 Sec. 55. **Protection Against Fraud.** Whoever with intent to deceive shall
43 make any statements and/or reports required under this act which are untrue, or shall

1 falsify or permit to be falsified any records of the Retirement System, or who shall
2 otherwise violate, with intent to deceive, any of the provisions of this act, shall be
3 prosecuted to the fullest extent of the law.

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

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

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

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

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

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

19 Section 3. This act becomes effective July 1, 1999.