

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1200
Committee Substitute Favorable 6/13/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H1200-PCS30656-LL-24

Short Title: Winston-Salem/New Bern Firefighters Retire.

(Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS OF THE WINSTON-SALEM FIREMEN'S
RETIREMENT FUND AND TO REPEAL THE PROVISIONS ESTABLISHING THE
NEW BERN FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Sections 1 through 32 of Chapter 388 of the 1973 Session Laws, as amended by Chapter 15 of the 1977 Session Laws, Chapter 284 of the 1979 Session Laws, Chapter 647 of the 1981 Session Laws, Chapter 464 of the 1983 Session Laws, Chapter 508 of the 1987 Session Laws, Chapter 793 of the 1989 Session Laws, S.L. 1998-92, S.L. 2003-35, S.L. 2006-121, and S.L. 2008-98, read as rewritten:

"**Sec. 1.** That the name of the Association herein established shall be Winston-Salem Firemen's Retirement Fund Association, hereinafter referred to as the Association. References to the Association as of a date prior to April 3, 1979, and following July 1, 1973, shall mean the Winston-Salem Fire-Public Safety Retirement Fund Association, which was the name of the Association during such period.

"**Sec. 2.** Subject to the provisions of Section 16 hereof, the following persons shall automatically be members of the Association:

(a) As of July 1, 1987, any person who was a member of the Association following the close of business of the Association immediately preceding such date.

(b) As of July 1, 1987, and thereafter, any person not covered under (a) above who shall have been regularly and continuously employed full time by the Fire Department of the City of Winston-Salem (hereinafter referred to as the Fire Department), including any Fire Department mechanic or electrician, who shall have attained his 18th birthday and shall not have attained his 40th birthday. Any person not covered under (a) above who was hired by the Fire Department prior to July 1, 1987, and continues to be employed by the Fire Department on such date, and who had attained his 30th birthday when hired but had not then attained his 40th birthday, may elect within 90 days following July 1, 1987, to become a member by contributing to the Association the sum of twelve dollars (\$12.00) per month from his date of hire by the Fire Department, plus interest at the rate of eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(c) Notwithstanding the provisions of subsection (b) immediately preceding, as a condition to any person's becoming a member of the Association pursuant to the provisions of



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1 subsection 2(b) or 16(a), the Trustees may require such person to undergo a physical
2 examination by a physician or physicians of good standing or repute selected by the Trustees. If
3 it shall be found from such physician's report that such person is not in good physical or mental
4 condition as of the date he would be eligible to become a member of the Association, such
5 person shall be denied membership in the Association. The determinations of whether or not
6 such person shall be required to undergo a physical examination and whether or not he is in
7 good physical or mental condition shall be made by the Trustees. In making such
8 determinations, all persons similarly situated shall be treated alike. The cost of any medical
9 examination required pursuant to the provisions of this subsection (c) shall be borne by the
10 person seeking membership in the Association.

11 **"Sec. 3.** The Association may provide and raise funds in any legal manner to be used as a
12 pension fund for such person or persons as may be entitled thereto under the provisions of this
13 act and to such extent as is hereinafter set out.

14 **"Sec. 4.** The governing body of the Association shall consist of a Board of Trustees seven
15 in number, four from the active membership of the Fire Department, two retired members of
16 the Fire Department, and one to be appointed by the Insurance Commissioner of the State of
17 North Carolina.

18 **"Sec. 5.** The Trustees from the membership of the Fire Department shall be elected by the
19 members of the Fire Department for four-year terms. Such terms shall be staggered, so that two
20 of the Trustees shall be elected during the month of January of each year divisible evenly by
21 two. Trustees that are slated to leave the Board are automatically candidates for reelection
22 unless they choose not to serve another term. In addition, the elected Association Trustees shall
23 select from the members of the Fire Department four members in good standing, each of whom
24 continuously served in the Fire Department for a period of at least four years. A general
25 election shall then be held by the membership of the Fire Department to elect from the list of
26 candidates two Trustees to serve a four-year term. Each member of the Fire Department in
27 good standing may cast two votes for the member's choice of nominees. The nominee receiving
28 the highest number of votes in the election will be a member of the Winston-Salem Firemen's
29 Relief Fund Board as well as the Association Board. In the event that a Trustee is unable to
30 complete the Trustee's term, the nominee receiving the next highest number of votes in the last
31 election held and who is not then serving as a Trustee shall complete the unexpired term of the
32 Trustee who resigned from the Board. A tie shall be resolved by casting lots. The Trustees who
33 are retired members of the Fire Department shall be appointed for four-year terms by the
34 Trustees who are active members of the Fire Department.

35 **"Sec. 6.** Any Trustee may resign at any time by giving notice in writing to the other
36 Trustees. Should any Trustee who is a member of the Fire Department cease to be a member of
37 the Fire Department for any reason, he shall automatically cease to be a Trustee. With regard to
38 any Trustee elected by the members of the Association who resigns or ceases to be a Trustee
39 for any reason, his successor shall be elected as provided in Section 5 of this act. Should the
40 Trustee who was appointed by the Insurance Commissioner of the State of North Carolina
41 resign or cease to be a Trustee for any reason, his successor shall be appointed by the said
42 Insurance Commissioner. Should any Trustee who is a retired member of the Fire Department
43 resign or cease to be a Trustee for any reason, that Trustee's successor shall be appointed by the
44 Trustees who are active members of the Fire Department as provided in Section 5 of this act.

45 **"Sec. 7.** The Board of Trustees is herein fully vested with the exclusive right and authority
46 to pay out the funds of this Association, as provided for in this act. All matters and claims
47 provided for under this act shall be passed upon by said Trustees and all decisions and actions
48 of said Trustees shall be binding upon the Association and the members thereof. Every Trustee
49 shall be entitled to one vote except the chairman of the Board of Trustees, who shall be entitled
50 to vote only to break a tie. At every annual meeting of the Board of Trustees, the Trustees shall
51 elect a chairman, vice-chairman, secretary and treasurer. The secretary and treasurer need not

1 be Trustees, and the offices of secretary and treasurer may be combined into a single office, in
2 the discretion of the Trustees. The annual meeting of the Board of Trustees shall be held as
3 soon as is practicable following the end of each calendar year at such place and at such time as
4 shall be determined by the Trustees.

5 **"Sec. 8.** As of September 1, 2001, the secretary of the Association (or the
6 secretary-treasurer if such offices shall be combined into a single office) shall be entitled to
7 receive monthly compensation in an amount to be determined each year by the Trustees. The
8 Trustees, as such, including the chairman and the vice-chairman, shall serve without
9 compensation. The Trustees may authorize reimbursement by the Association to any officer or
10 Trustee of the Association for all expenses incurred by such person in connection with services
11 rendered in behalf of the Association.

12 **"Sec. 9.** The Trustees shall elect a custodian of all funds and property of the Association,
13 provided that such custodian shall have first offered proof satisfactory to the Trustees, by bond
14 or otherwise, that it is and will be financially responsible for all property coming into its hands
15 in a fiduciary capacity. Said custodian shall not release any of the funds or property of the
16 Association for reasons other than investment of such funds or property except upon the written
17 authorization of the Trustees.

18 The Trustees shall also elect an investment manager who may or may not be the same
19 person as the custodian. Any such investment manager shall be a bank, or an insurance
20 company, or an entity registered under the Investment Advisor's Act of 1940. The investment
21 manager shall be authorized to invest and reinvest the funds or property of the Association in
22 the investment manager's own judgment and discretion. The investment manager shall report to
23 the Trustees on a periodic basis, but not less frequently than each calendar quarter. The
24 investment manager (including said custodian when acting as investment manager) shall not be
25 liable to the Association for any act of failure to act by it, except for gross negligence or willful
26 misconduct.

27 **"Sec. 10.** A special meeting of the Board of Trustees may be called by the chairman or
28 vice-chairman, or by any two Trustees, upon 24 hours' written notice delivered in person to the
29 members of said Board or mailed to the last known address of each member of said Board. A
30 majority of the Trustees in office shall constitute a quorum at any meeting and a majority vote
31 of the Trustees at a meeting at which a quorum is present shall constitute action by the
32 Trustees.

33 **"Sec. 11.** The chairman of the Board of Trustees, when present, shall preside at all
34 meetings. In the absence of the chairman, the vice-chairman shall act as chairman.

35 **"Sec. 12.** The secretary shall keep in complete form such data as shall be necessary for
36 actuarial valuation of the funds of the Association and for checking the disbursements for and
37 on behalf of the Association. He shall keep minutes of all proceedings of the Board of Trustees
38 and of the Association, and the same shall be kept in a place selected by the Trustees. The
39 treasurer of the Association shall post yearly at each fire station and at the office of fire
40 administration, as soon as practicable following the end of each year, a financial statement of
41 the Association.

42 **"Sec. 13.** The treasurer of the Association shall deposit with the custodian all funds and
43 property that may come into his hands for the Association. The said treasurer shall obtain a
44 receipt from the custodian for all funds and property delivered to the custodian by the treasurer.
45 Said custodian shall invest and reinvest such funds and property as directed by the investment
46 manager appointed under Section 9. Notwithstanding any contrary provisions of Section 9 or of
47 this section, the Trustees are specifically authorized and empowered to invest funds of the
48 Association by depositing such funds with the Winston-Salem Firemen's Credit Union on
49 condition that the Association shall receive interest at an annual rate agreed upon by the
50 Association and such credit union.

1 **"Sec. 14.** The custodian and the investment manager shall receive compensation for
2 services rendered as may be agreed upon from time to time in writing by the Trustees and by
3 the custodian (with respect to services rendered by the custodian) or the investment manager
4 (with respect to services rendered by the investment manager). The Trustees shall have the
5 authority to employ legal counsel when, in the opinion of the Trustees, legal counsel is
6 necessary. In case of such employment, said counsel shall be paid such fees as may be fair and
7 reasonable as agreed upon in writing by the Trustees and the counsel so employed.

8 **"Sec. 15.** On or before August 31, 1987, the Board of Trustees of the Winston-Salem
9 Firemen's Relief Fund shall transfer to the Board of Trustees of the Winston-Salem Firemen's
10 Retirement Fund Association out of properties and funds belonging to the Winston-Salem
11 Firemen's Relief Fund the sum of fifty-four thousand dollars (\$54,000) in cash or assets. The
12 assets so transferred pursuant to the immediately preceding sentence shall be transferred upon
13 the basis of the fair market value thereof as of the date of transfer, and the particular assets to
14 be transferred shall be determined by joint action of the Board of Trustees of the
15 Winston-Salem Firemen's Relief Fund and the Board of Trustees of the Winston-Salem
16 Firemen's Retirement Fund Association. All property of the Association is hereby relieved from
17 any and all claims of the persons entitled to relief from the Winston-Salem Firemen's Relief
18 Fund. The North Carolina Firemen's Association, its officers, members, boards and committees,
19 are also hereby relieved of any claim of any kind whatsoever which may be based on past
20 service, present service or future service in the Winston-Salem Fire Department. The
21 Winston-Salem Firemen's Relief Fund and the officers, members, boards and committees of
22 said Fund, are also hereby relieved of any claim of any kind whatsoever which may be based
23 on past, present or future service in the Winston-Salem Fire Department, if any, so long as any
24 claimant is entitled to benefits or pension under the provisions of this act.

25 **"Sec. 16.** (a) Notwithstanding the provisions of subsection (b) immediately following, if a
26 person who shall not be a member of the Association shall be transferred to the employment of
27 the Fire Department from the employment of the City of Winston-Salem (hereinafter referred
28 to as the City), the following provisions shall apply in determining whether he shall be a
29 member of the Association following such transfer:

- 30 (1) If he shall have attained at least his 18th birthday and shall not have attained
31 his 40th birthday on the date of such transfer, he shall automatically become
32 a member on such date of transfer. In determining such transferred
33 employee's number of years of continuous employment by the City,
34 employment with the City prior to such transfer shall be taken into account
35 only if such employee shall elect to contribute to the Association the sum of
36 (i) plus (ii) plus (iii), where (i) is the amount of twelve dollars (\$12.00) per
37 month, measured from the date of his hire by the City until earlier of the date
38 of such transfer and June 30, 1998; (ii) is the aggregate amount that the
39 person would have contributed, determined in accordance with Section 17 of
40 this act, measured from July 1, 1998, until the date of the transfer, if the
41 transfer occurs on or after July 1, 1998; and (iii) is interest accrued at the rate
42 of eight percent (8%) with respect to any payments made on and after July 1,
43 1989, per annum, compounded annually on the amount accrued as of the end
44 of each fiscal year of the Association.
- 45 (2) If he shall have attained at least his 40th birthday on the date of transfer, but
46 had not attained such birthday when last employed by the City, he may elect
47 within 90 days following such transfer to become a member. If he elects to
48 become a member, he shall contribute to the Association the amount he
49 would have contributed if he had become a member on the day next
50 preceding his 40th birthday. In addition, at the option of such employee, he
51 may further elect to contribute such additional amount as he would have

1 contributed prior to his 40th birthday if his employment with the City had
2 been with the Fire Department. Any such contributions shall include interest
3 at the rate of eight percent (8%), applicable to any payments made on and
4 after July 1, 1989, per annum, computed on the amount accrued as of the end
5 of each fiscal year of the Association.

6 (3) If he shall have attained at least his 40th birthday when last employed by the
7 City, he shall be ineligible to become a member following such transfer.

8 (4) The elections specified in subdivisions (1) and (2) hereof shall be made in
9 writing to the Trustees within 90 days following such transfer, and shall be
10 irrevocable when made (subject to termination of membership upon
11 subsequent separation from employment with the Fire Department). Any
12 contributions (and interest) payable pursuant to such election shall be paid in
13 cash in a lump sum at the time such election shall be filed.

14 (b) Notwithstanding the provisions of subsection (a) of Section 2 hereof, as soon as
15 practicable following April 3, 1979, (but in no event more than 60 days thereafter), the Trustees
16 gave each person who was then employed by the City of Winston-Salem as a Public Safety
17 Officer an election to be a member or not to be a member of the Association. Each such
18 election was to be made in accordance with procedures established by the Trustees and was
19 irrevocable when made (subject to termination of membership upon a subsequent separation
20 from the employment of the City, and subject to the provisions of subsection (a) of this Section
21 16). If a Public Safety Officer failed to file a timely election, he was deemed to have elected not
22 to be a member. If a Public Safety Officer who was a member on the date of the election
23 elected to discontinue membership (or shall have been deemed to have so elected), within 30
24 days following such date there should have been refunded to him the full amount of his prior
25 contributions to the Association, if any, without interest. If a Public Safety Officer who failed
26 to make contributions prior to the election date elected to be a member, he shall have within 30
27 days following such election paid to the Association the full amount he would have contributed
28 if he had made required contributions during the entire period that he was eligible to be a
29 member. Such contributions included interest at the rate of six percent (6%) per annum,
30 computed on the amount accrued as of the end of each fiscal year of the Association.

31 (c) Any member whose employment by the Fire Department as a Public Safety Officer
32 shall be terminated on or after June 27, 1981, for any reason, including transfer to another
33 department in the employment of the City, shall be terminated immediately as a member;
34 provided, that any member who is transferred on or after July 1, 1981, to another department of
35 the City in a fire-related job shall not become a terminated member if the following conditions
36 are met: (i) within 15 days following the date of such transfer he shall file with the Trustees a
37 written election to continue as a member; and (ii) such member shall be notified in writing by
38 the secretary of the Association on or before the date of transfer of his right to make the
39 election. If a terminated member shall reenter employment of the Fire Department, his
40 eligibility to become a member shall be determined at that time in accordance with Section 2
41 hereof, except to the extent such individual may be entitled to elect to become a member upon a
42 transfer of employment as provided in subsection (a) of this Section 16.

43 (d) In determining the number of years of continuous employment of a member, there
44 shall be taken into account all years for which he shall make contributions in accordance with
45 subsection (a) or (e) of this Section 16 or Section 19. For purposes of computing a member's
46 years of continuous employment with the City, any period of unused sick leave with the Fire
47 Department accrued by the member on the date of his retirement shall be deemed to be a period
48 of continuous employment with the Fire Department.

49 (e) If any member of the Association was employed by the Fire Department as a cadet,
50 such member's number of years of employment as a cadet may be added to the period of his
51 continuous employment with the City if, by July 31, 1981, such member contributed to the

1 Association an amount equal to twelve dollars (\$12.00) per month for the time he was a cadet,
2 plus interest at the rate of six percent (6%) per annum, computed on the amount accrued as of
3 the end of each fiscal year of the Association.

4 (f) If a member has been employed by the City continuously for a period of 10 years
5 and has any military service, and is not otherwise treated under Section 26 as being in the
6 employment of the City during the period of such military service, the period of such military
7 service shall nevertheless be added to his period of continuous employment with the City upon
8 such member's paying to the Association an amount equal to twelve dollars (\$12.00) for each
9 month of such military service plus interest at the rate of eight percent (8%), applicable to any
10 payments made on and after July 1, 1989, per annum, compounded annually. Such military
11 service shall be limited to the initial period of active duty in the armed forces of the United
12 States up to the time the member was first eligible to be separated or released therefrom, and
13 subsequent periods of such active duty as required by the armed forces of the United States up
14 to the date of first eligibility for separation or release therefrom. The member must submit
15 evidence satisfactory to the Trustees of the military service claimed. Such election must be
16 made within one year after the member first becomes eligible to contribute for such military
17 service. Credit for military service under this subsection shall not be considered service
18 creditable under another retirement system for purposes of G.S. 128-26(a).

19 (g) If an individual who is an active participant in the North Carolina Local
20 Governmental Employees' Retirement System (the 'System') shall terminate service with the
21 employer enabling the individual to participate in the System (the 'System Employer'), and
22 shall immediately enter the employment of the Fire Department, he may elect to have his
23 period of service under the System considered as continuous employment with the Fire
24 Department for purposes of this act; provided, that such election shall be permitted only if the
25 individual was under age 40 when he entered the employment of the System Employer. This
26 election shall be made in writing to the Trustees within 90 days of the individual's
27 commencement of employment with the Fire Department (or, with respect to an individual who
28 becomes employed by the Fire Department prior to July 1, 1989, this election shall be made on
29 or before September 30, 1989). The election, if made, shall be accompanied by a cash
30 contribution to the Association equal to the sum of (i) plus (ii) plus (iii), where (i) is the amount
31 of twelve dollars (\$12.00) per month measured from the date of the person's hiring by the City
32 until the earlier of the transfer and June 30, 1998; (ii) is the aggregate amount that the person
33 would have contributed, determined in accordance with Section 17 of this act, measured from
34 July 1, 1998, until the date of the transfer, if the transfer occurs on or after July 1, 1998; and
35 (iii) is interest accrued at the rate of eight percent (8%) per annum, compounded annually on
36 the amount accrued as of the end of each fiscal year of the Association. The election shall be
37 irrevocable when made. If the election is not made in a timely fashion, the right to make the
38 election is forfeited.

39 **"Sec. 17.** The Treasurer of the City shall make a deduction from the salary of each member
40 of the Association due him by the City. As of ~~September 1, 2001,~~July 1, 2012, the amount of
41 each such deduction shall be determined as of the first day of each payroll period of the City,
42 and shall be equal to the ~~quotient (rounded up to the next whole dollar amount) obtained by~~
43 ~~dividing (i) the product, rounded to the nearest dollar, of .007 multiplied by the annual starting~~
44 ~~salary of a firefighter employed by the Fire Department in effect at the beginning of that payroll~~
45 ~~period; by (ii) the number of payroll periods in that fiscal year of the City.~~amount determined
46 by the Trustees acting upon the advice of the Association's actuary. The amount so deducted
47 shall be turned over as soon as practicable after the applicable payroll period by the said
48 Treasurer to the custodian of the Association as hereinbefore provided, and the Association
49 shall have the authority to accept donations from any and all sources whatsoever.

50 **"Sec. 18.** If at any time there shall not be sufficient assets in the retirement fund of the
51 Association to pay fully the persons entitled to benefits provided herein, such persons shall be

1 paid such benefits on a pro rata basis to the extent the assets of such fund will allow, as shall be
 2 determined by the Trustees acting upon the advice of the Association's actuary. Effective on or
 3 after July 1, 1998, the Trustees shall obtain a written report from the Association's actuary as of
 4 July 1 of each year evenly divisible by two, or more frequently if the Trustees deem advisable,
 5 setting forth the present value of the assets of the fund and the present value of current
 6 liabilities of current retirees.

7 **"Sec. 19.** (a) Whenever any member of the Association has been employed by the City
 8 continuously for a period of at least 30 years, such member may make written application to the
 9 trustees for his normal retirement benefit, and whenever any member of the Association has
 10 been employed by the City continuously for a period of at least 25 years but not more than 30
 11 years, such member may make written application to the Trustees for his early retirement
 12 benefit; provided, however, that such member must retire from the service of the City to
 13 receive such benefits. The normal and early retirement benefits of such member shall be a
 14 monthly pension for the remainder of his life, as provided herein below. For this purpose and
 15 for the purpose of Section 20 hereof, a member shall be deemed to have been employed by the
 16 City continuously if such member shall have been employed continuously by any combination
 17 of the Fire Department or Police Department (but only such employment by the Police
 18 Department as is described in subsection 16(b) and (c) hereof), and the transfer of a member
 19 from the employ of one of such organizations to the employ of the other such organization shall
 20 not be deemed to be a termination of employment by the City. Provided, that if a member has at
 21 least 25 years of employment with the City, but such service is not continuous solely because
 22 of a leave of absence lasting not more than a year and not described in Section 26, such
 23 member shall be deemed to have continuous employment with the City during such leave of
 24 absence; and provided further, that if a member has less than 25 years of employment with the
 25 City but the sum of his years of employment with the City plus any leave of absence lasting not
 26 more than one year and not described in Section 26, equals or exceeds 25 years, the period of
 27 such leave shall be deemed to be continuous employment with the City if such member
 28 contributes to the Association twelve dollars (\$12.00) for each month he was on such leave,
 29 plus interest at the rate of eight percent (8%), applicable to any payments made on and after
 30 July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of
 31 the Association.

32 (b) Effective beginning July 1, 1989, and ending June 30, 1990, the amount of the
 33 monthly pension for each member who is entitled to receive a normal retirement benefit
 34 (including members who retired prior to July 1, 1989) shall be two hundred dollars (\$200.00).
 35 Effective beginning July 1, 1990, and ending June 30, 1998, the amount of the monthly pension
 36 for each member who is entitled to receive a normal retirement benefit, including members
 37 who retired prior to July 1, 1990, shall be two hundred fifteen dollars (\$215.00). Effective on
 38 and after July 1, 1998, the amount of the monthly pension for each member who is entitled to
 39 receive a normal retirement benefit (including members who retired prior to that date) shall be
 40 two hundred five dollars (\$205.00). The amount of the monthly pension for each member who
 41 is entitled to receive an early retirement benefit as of any date prior to July 1, 1998, shall be the
 42 product of (1) and (2), where (1) is the applicable percentage listed in the following table based
 43 on his years of continuous employment at his early retirement date, and (2) is the amount of the
 44 payment that he would have received as a normal retirement benefit under this section as of that
 45 date:

Years of Employment at Retirement Date	Percentage of Normal Retirement Benefit
25	85%
26	88%
27	91%

1	28	94%
2	29	97%

3
 4 Effective on and after July 1, 1998, the amount of the monthly pension for each member who
 5 began receiving an early retirement benefit prior to July 1, 1998, shall be further reduced by
 6 multiplying the monthly pension amount by 0.9535.

7 (c) Effective on and after July 1, 1998, the amount of the monthly pension of each
 8 member who retires on or after that date and is entitled to receive an early retirement benefit
 9 shall be the product of (1) the applicable percentage listed in the following table based on
 10 the member's years of continuous employment at the member's early retirement date, and (2)
 11 the amount of the payment that the member would have received as a normal retirement benefit
 12 under this section as of that date:

14	Years of Employment at	Percentage of Normal
15	Retirement Date	Retirement Benefit
16	25	70%
17	26	76%
18	27	82%
19	28	88%
20	29	94%

21
 22 Payment shall be subject to the provisions of Section 18 of this act. Section 16(d) governs the
 23 determinations of a member's years of continuous employment.

24 (d) Any benefit payable to a member pursuant to this Section 19 shall commence not
 25 later than the April 1 immediately following the calendar year in which the member attains age
 26 70 and 1/2 or, if later, the April 1 immediately following the calendar year in which the
 27 member retires from the service of the City. Additionally, the distribution of any such benefit
 28 shall be made in accordance with the requirements of section 401(a) of the Internal Revenue
 29 Code, including the minimum distribution incidental benefit requirement of section
 30 1.401(a)(9)-2 of the Treasury Regulations, which are incorporated herein by reference. With
 31 respect to distributions made for the calendar years beginning on or after January 1, 2001, the
 32 act will apply the minimum distribution requirements of section 401(a)(9) of the Internal
 33 Revenue Code in accordance with the regulations under section 401(a)(9) of the Internal
 34 Revenue Code that were proposed on January 17, 2001, notwithstanding any provision of the
 35 act to the contrary. This amendment shall continue in effect until the end of the last calendar
 36 year beginning before the effective date of final regulations under section 401(a)(9) of the
 37 Internal Revenue Code or such other date as may be specified in guidance published by the
 38 Internal Revenue Service.

39 (e) Notwithstanding any provision in this Section 19 to the contrary, effective as of
 40 December 12, 1994, the act shall at all times be construed and enforced according to the
 41 requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994.

42 "**Sec. 20.** Whenever any member of the Association becomes totally and permanently
 43 unable, because of infirmity or disease affecting mind or body (whether or not induced by
 44 injury) to perform his duties for the City, which inability shall be determined by a medical
 45 examination by a physician or physicians of good standing and repute selected by the Trustees,
 46 he shall be deemed to be a disabled member. If a disabled member has been employed by the
 47 City for at least five full years prior to suffering disability, he shall be entitled to retire and
 48 receive a monthly benefit payable for the remainder of his life.

49 Effective beginning July 1, 1989, and ending June 30, 1990, the monthly benefit of a
 50 member who retires as a disabled member (including a member who retired as a disabled
 51 member prior to July 1, 1989) shall equal eight dollars (\$8.00) times his years of service but in

1 no event more than two hundred dollars (\$200.00) per month. Effective beginning July 1, 1990,
2 and ending June 30, 1998, the monthly benefit of a member (including a member who retires as
3 a disabled member prior to this date) shall equal eight dollars and sixty cents (\$8.60) times his
4 years of service, but in no event more than two hundred fifteen dollars (\$215.00) per month.
5 Effective on and after July 1, 1998, the monthly benefit of a member who retires as a disabled
6 member, including a member who retires as a disabled member prior to July 1, 1998, shall
7 equal eight dollars and twenty cents (\$8.20) times his years of service, but in no event more
8 than two hundred five dollars (\$205.00) per month. For this purpose only, years of service shall
9 mean the number of his earned years of service in the employment of the City (as determined
10 pursuant to Section 16(d) of this act). Payments shall be subject to the provisions of Section 18
11 of this act.

12 Notwithstanding the foregoing provisions of this Section 20, in the case of a disabled
13 member whose disability shall arise out of injuries incurred in fire safety activities, such as fire
14 fighting, fire training and fire inspection, such monthly benefit shall in no event be less than
15 forty dollars (\$40.00) per month, whether or not such disabled member was employed by the
16 City for at least five years prior to suffering such disability. The determination of whether such
17 disability arises out of injuries incurred in fire safety activities shall be made by the Trustees.

18 **"Sec. 21.** Any disabled member of the Association who retires under Section 19 hereof and
19 who had not been employed by the City for a period of at least 30 years prior to retirement,
20 shall be subject to call by the Trustees for reexamination by a physician of good standing and
21 repute selected by the Trustees and, if based upon such examination it is determined by the
22 Trustees that such member is able to perform active duties for the City, such member may be
23 reinstated and receive for his services the same compensation paid to other employees of the
24 City of his rank or classification. If such member, upon being called by the Trustees, shall
25 refuse to submit to an examination or shall refuse to be reinstated to active duty in the employ
26 of the City after being found to be able to perform active duty, such benefits as he is then
27 receiving under the provisions of this act shall immediately terminate and his membership in
28 this Association shall automatically terminate. But in the event that such member is physically
29 unable to resume active employment, or in the event he is able and willing to resume active
30 employment but no job with the City is open for him at such time, his pension or compensation
31 shall continue until there shall be an opening for such member and he is reemployed by the
32 City. For the purpose of this Section 21, employment with the City shall mean only
33 employment with the Fire Department or Police Department (but employment with the Police
34 Department shall be included only with regard to any such member who was employed with
35 the Police Department prior to his retirement under Section 20 hereof).

36 **"Sec. 22.** When any member of the Association shall resign or be dismissed from
37 employment by the City (which for this purpose shall include only employment with the Fire
38 Department or Police Department), he shall receive a sum of money equal to all monies paid
39 into the Association by him. Upon the death of any member of the Association while in the
40 employment of the City, a sum of money equal to all monies paid into the Association by such
41 deceased member shall be paid to the beneficiary or beneficiaries designated in writing by such
42 deceased member, or in default thereof, to his estate. If, after retirement, a member of the
43 Association shall die before having received an amount equal to his contributions to the
44 Association, there shall be paid to the beneficiary or beneficiaries designated by such member,
45 or in default thereof to his estate, an amount equal to his contributions less the sum of
46 retirement benefits paid to such member. The reimbursements provided in this Section 22 shall
47 be in cash in a lump sum, unless otherwise determined by the Trustees with the consent in
48 writing of the recipient thereof less interest, if any, previously contributed to the Association by
49 the member pursuant to Section 16 or Section 19.

50 **"Sec. 23.** No amount payable or held by the Association under this act for the benefit of any
51 member or beneficiary thereof shall be subject in any manner to anticipation, alienation, sale,

1 transfer, assignment, pledge, encumbrance or charge, nor shall any amount payable or held
2 under this act for the benefit of any member or beneficiary thereof be in anywise liable for his
3 debts, contracts, liabilities, engagements, or torts, nor be subject to any legal process to levy
4 upon or attach, but the provisions of this Section 22 shall not be applicable as regards any
5 dealings with or obligations to the Winston-Salem Firemen's Credit Union.

6 "Sec. 24. Out of the amount paid to the Insurance Commissioner of the State of North
7 Carolina upon the amount of all premiums on fire and lightning policies covering property
8 situated in the corporate limits of the City, the Insurance Commissioner of the State of North
9 Carolina shall pay annually to the Treasurer of the City ninety-five percent (95%), and the
10 Treasurer of the City shall immediately pay over the same to the treasurer of the Association, or
11 if the treasurer of the Association shall so direct, the Treasurer of the City shall pay such
12 amount directly to the custodian.

13 "Sec. 25. No member of this Association or Trustee shall be personally liable in any manner
14 whatsoever to any person, association, firm or corporation by reason of his connection with, or
15 act or acts on behalf of, said Association, unless such act or acts are fraudulently committed.

16 "Sec. 26. If a member of the Association, or an employee of the Fire Department or Police
17 Department who is not a member of the Association due to failure to meet the minimum age
18 requirements of subsection 2(b) hereof, is granted a leave of absence from employment by the
19 City on account of accidental injury or temporary illness, military service during time of active
20 warfare, compulsory military service in time of peace, or other good cause, for the purpose of
21 this act such employee shall be deemed to have remained in the employment of the City during
22 the period of such leave of absence or any extension thereof if he shall return to active service
23 with the City promptly following the end of the period of such leave of absence or extension
24 thereof. During such leave of absence or extension thereof, the Treasurer of the City shall make
25 no deductions from the salary, if any, of such member, and such member shall not otherwise be
26 required to make any contributions to the Association during or with respect to such period.

27 "Sec. 27. If any person entitled to benefits under this act shall be physically or mentally
28 incapable of receiving or acknowledging receipt of such benefits, the Trustees, upon receipt of
29 satisfactory evidence of such incapacity and that another person or institution is maintaining
30 such person entitled to benefits, and that no guardian or committee has been appointed for him,
31 may cause any benefits otherwise payable to him to be made to such person or institution so
32 maintaining him.

33 "Sec. 28. The provisions of this act shall be administered on an equitable and
34 nondiscriminatory basis, it being the intent hereof that where the Trustees are given
35 discretionary powers, such powers shall be exercised in an equitable manner and so as to
36 prevent discrimination between persons similarly situated. All assets of the Association shall be
37 administered for the exclusive benefit of the members of the Association and their
38 beneficiaries, and as a fund to provide for such members or beneficiaries the benefits provided
39 in this act. It shall be impossible for any part of the principal or income of the retirement fund
40 of the Association to be used for or diverted to purposes other than for the exclusive benefit of
41 the members of the Association or their beneficiaries as provided in this act; except that the
42 Trustees may use such assets to pay the reasonable expenses incurred in administering the said
43 fund and any debts, liabilities or obligations of said fund. The assets and income of the fund
44 shall be exempt from all taxes, including income taxes, imposed by the State of North Carolina
45 or any political subdivision thereof.

46 "Sec. 28A. (a) Upon termination of the Association or upon complete discontinuance of
47 contributions to the Association, the rights of all members of the Association to benefits
48 accrued to the date of the termination or discontinuance, to the extent then funded, are
49 nonforfeitable.

50 (b) Forfeitures under the Association may not be applied to increase the benefits that
51 any member would otherwise receive under the Association.

1 (c) Notwithstanding any provision of the Association to the contrary, the maximum
2 annual benefit payable in the form of a straight life annuity from the Association on behalf of a
3 member, when combined with any benefits from another qualified retirement plan maintained
4 by the Fire Department of the City of Winston-Salem, shall not exceed the amount permitted by
5 section 415 of the Internal Revenue Code, the provisions of which are specifically
6 incorporated by reference into this act.

7 (d) In addition to the other applicable limitations set forth in this act, and
8 notwithstanding any other provision of this act to the contrary, for plan years beginning on or
9 after January 1, 1996, the annual compensation of each member taken into account under this
10 act shall not exceed the OBRA 1993 annual compensation limit. The OBRA 1993 annual
11 compensation limit is one hundred fifty thousand dollars (\$150,000), as adjusted by the
12 Commissioner for increase in the cost of living in accordance with section 401(a)(17)(B) of the
13 Internal Revenue Code. The cost of living adjustment in effect for a calendar year applies to
14 any period, not exceeding 12 months, over which compensation is determined (the
15 "determination period") beginning in that calendar year. If a determination period consists of
16 fewer than 12 months, the OBRA 1993 annual compensation limit shall be multiplied by a
17 fraction, the numerator of which is the number of months in the determination period, and the
18 denominator of which is 12. If compensation for any prior determination period is taken into
19 account in determining a member's benefits accruing in the current plan year, the compensation
20 for that prior determination period is subject to the OBRA 1993 annual compensation limit in
21 effect for that prior determination period. For this purpose, for determination periods beginning
22 before the first day of the first plan year beginning on or after January 1, 1996, the OBRA 1993
23 annual compensation limit is one hundred fifty thousand dollars (\$150,000). Effective for plan
24 years beginning on or after January 1, 2002, the OBRA 1993 annual compensation limit shall
25 be two hundred thousand dollars (\$200,000), as adjusted by the Commissioner for increases in
26 the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code.

27 (e) This subsection applies to distributions made on or after January 1, 2002.
28 Notwithstanding any provision of this act to the contrary that would otherwise limit a
29 distributee's election under this subsection, a distributee may elect, at the time and in the
30 manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid
31 directly to an eligible retirement plan specified by the distributee in a direct rollover. The
32 following definitions shall apply for purposes of this subsection:

33 (1) Eligible rollover distribution. An eligible rollover distribution is any
34 distribution of all or any portion of the balance to the credit of the
35 distributee, except that an eligible rollover distribution does not include:

36 a. Any distribution that is one of a series of substantially equal periodic
37 payments (not less frequently than annually) made for the life (or life
38 expectancy) of the distributee or the joint lives (or joint life
39 expectancies) of the distributee and the distributee's designated
40 beneficiary, or for a specified period of 10 years or more;

41 b. Any distribution to the extent such distribution is required under
42 section 401(a)(9) of the Internal Revenue Code; or

43 c. Any distribution that is made upon the hardship of the distributee.

44 Notwithstanding the foregoing, a portion of a distribution shall not fail to be
45 an eligible rollover distribution merely because the portion consists of
46 after-tax employee contributions that are not includible in gross income.
47 However, such a portion may be transferred only to an individual retirement
48 account or annuity described in section 408(a) or section 408(b) of the
49 Internal Revenue Code, or to a qualified defined contribution plan described
50 in section 401(a) or section 403(a) of the Internal Revenue Code that agrees
51 to separately account for amounts so transferred, including separately

- 1 accounting for the portion of that distribution that is includible in gross
2 income and the portion of that distribution that is not so includible.
- 3 (2) Eligible retirement plan. An eligible retirement plan is an individual
4 retirement account described in section 408(a) of the Internal Revenue Code,
5 an individual retirement annuity described in section 408(b) of the Internal
6 Revenue Code, or a qualified trust described in section 401(a) of the Internal
7 Revenue Code, that accepts the distributee's eligible rollover distribution. An
8 eligible retirement plan shall also mean an annuity contract described in
9 section 403(b) of the Internal Revenue Code and an eligible plan under
10 section 457(b) of the Internal Revenue Code that is maintained by a state, a
11 political subdivision of a state, or any agency or instrumentality of a state or
12 a political subdivision of a state, and that agrees to separately account for
13 amounts transferred into that plan from the Association. The definition of
14 eligible plan shall also apply in the case of a distribution to a surviving
15 spouse, or to a spouse or former spouse who is the alternate payee under a
16 qualified domestic relations order, as defined in section 414(p) of the
17 Internal Revenue Code. Effective January 1, 2008, an eligible retirement
18 plan shall also mean a Roth IRA as described in section 408A of the Internal
19 Revenue Code.
- 20 (3) Distributee. A distributee includes a member or former member of the
21 Association. In addition, the surviving spouse of a member or former
22 member is a distributee with regard to the interest of the member or former
23 member.
- 24 (4) Direct rollover. A direct rollover is a payment by the Association to the
25 eligible retirement plan specified by the distributee.
- 26 (5) Rollovers by nonspouse beneficiaries. Notwithstanding anything in this
27 subsection to the contrary, effective January 1, 2007, the benefits of
28 nonspouse beneficiaries may be transferred in a direct rollover to an
29 inherited individual retirement account or an inherited individual retirement
30 annuity ("inherited IRA"). Once in the inherited IRA, distributions will be
31 made in compliance with the minimum distribution rules of section
32 401(a)(9) of the Internal Revenue Code that apply following the death of a
33 member.

34 (f) Notwithstanding any other provisions of this act, the following provisions apply in
35 order to comply with the requirements of the Heroes Earnings Assistance and Relief Tax Act of
36 2008:

- 37 (1) Death benefits. If a member of the Association dies on or after January 1,
38 2007, while performing qualified military service as defined in section
39 414(u) of the Internal Revenue Code, the member's beneficiary is entitled to
40 any additional benefits, other than benefit accruals relating to the period of
41 qualified military service, provided under the Association as if the member
42 had resumed employment and then terminated on account of death. The
43 Association shall also credit that member's qualified military service for
44 vesting purposes as though the member had resumed employment
45 immediately prior to the member's death.
- 46 (2) Differential wage payments. For years beginning after December 31, 2008:
- 47 a. An individual receiving a differential wage payment as defined in
48 section 3401(h)(2) of the Internal Revenue Code shall be treated as
49 an employee of the employer making the payment.
- 50 b. The differential wage payment shall be treated as compensation.

1 c. The Association shall not be treated as failing to meet the
2 requirements of any provision described in section 414(u)(1)(C) of
3 the Internal Revenue Code by reason of any contribution or benefit
4 that is based on the differential wage payment, but only if the
5 following apply:

6 1. All employees of the employer performing services described
7 in section 3401(h)(2)(A) of the Internal Revenue Code are
8 entitled to receive differential wage payments as defined in
9 section 3401(h)(2) of the Internal Revenue Code on
10 reasonably equivalent terms; and

11 2. All employees, if eligible to participate in a retirement plan
12 maintained by the employer, are entitled to make
13 contributions or receive benefits based upon the payments on
14 reasonably equivalent terms, taking into account the
15 provisions of sections 4110(b)(3), (4), and (5) of the Internal
16 Revenue Code.

17 **"Sec. 28B.** (a) This section shall apply for purposes of determining required minimum
18 distributions for calendar years beginning with the 2003 calendar year. The requirements of this
19 section shall take precedence over any inconsistent provisions of the Association. All
20 distributions required under this section shall be determined and made in accordance with the
21 Treasury Regulations under section 401(a)(9) of the Internal Revenue Code, which are
22 specifically incorporated by reference into this act. Notwithstanding the other provisions of this
23 section, distributions may be made under a designation made before January 1, 1984, in
24 accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA)
25 and the provisions of the Association that relate to section 242(b)(2) of TEFRA.

26 (b) Time and Manner of Distribution. –

27 (1) Required beginning date. – The member's entire interest will be distributed,
28 or begin to be distributed, to the member no later than the member's required
29 beginning date.

30 (2) Death of member before distributions begin. – If the member dies before
31 distributions begin, the member's entire interest will be distributed, or begin
32 to be distributed, no later than as follows:

33 a. If the member's surviving spouse is the member's sole designated
34 beneficiary, as defined in section 28(e)(1), then distributions to the
35 surviving spouse will begin by December 31 of the calendar year
36 immediately following the calendar year in which the member died,
37 or by December 31 of the calendar year in which the member would
38 have attained age 70 ½, if later.

39 b. If the member's surviving spouse is not the member's sole designated
40 beneficiary, then distributions to the designated beneficiary will
41 begin by December 31 of the calendar year immediately following
42 the calendar year in which the member died.

43 c. If there is no designated beneficiary as of September 30 of the year
44 following the year of the member's death, the member's entire
45 interest will be distributed by December 31 of the calendar year
46 containing the fifth anniversary of the member's death.

47 d. If the member's surviving spouse is the member's sole designated
48 beneficiary and the surviving spouse dies after the member but
49 before distributions to the surviving spouse begin, the provisions of
50 this subdivision, except for sub-subdivision a. of this subdivision,
51 will apply as if the surviving spouse were the member.

1 For purposes of this subdivision and of subsection (d) of this section,
2 distributions are considered to begin on the member's required beginning
3 date, or if sub-subdivision d. of this subdivision applies, the date
4 distributions are required to begin to the surviving spouse under
5 sub-subdivision a. of this subdivision. If annuity payments irrevocably
6 commence to the member before the member's required beginning date, or to
7 the member's surviving spouse before the date distributions are required to
8 begin to the surviving spouse under sub-subdivision a. of this subdivision,
9 the date distributions are considered to begin is the date distributions
10 actually commence.

11 (3) Forms of distribution. – Unless the member's interest is distributed in the
12 form of an annuity purchased from an insurance company or in a single
13 lump sum on or before the required beginning date, as of the first
14 distribution calendar year, as defined in subdivision (2) of subsection (e) of
15 this section, distributions will be made in accordance with subsections (b),
16 (c), and (d) of this section. If the member's interest is distributed in the form
17 of an annuity purchased from an insurance company, distributions under that
18 annuity shall be made in accordance with the requirements of section
19 401(a)(9) of the Internal Revenue Code and the Treasury Regulations.

20 (b) Determination of Amount to be Distributed Each Year. –

21 (1) General annuity requirements. – If the member's interest is paid in the form
22 of annuity distributions from the Association, payments under the annuity
23 will satisfy the following requirements:

- 24 a. The annuity distributions shall be paid in periodic payments made at
25 intervals not longer than one year;
- 26 b. The distribution period shall be over a life, or lives, or over a period
27 certain not longer than the period described in subsection (c) or (d) of
28 this section;
- 29 c. Once payments have begun over a period certain, the period certain
30 will not be changed even if the period certain is shorter than the
31 maximum permitted;
- 32 d. Payments will either not increase or will increase only as follows:
 - 33 1. By an annual percentage increase that does not exceed the
34 annual percentage increase in an eligible cost-of-living index,
35 as defined in subdivision (3) of subsection (e) of this section,
36 for a 12-month period ending in the year during which the
37 increase occurs or the prior year;
 - 38 2. By a percentage increase that occurs at specified times and
39 does not exceed the cumulative total of annual percentage
40 increases in an eligible cost-of-living index since the annuity
41 starting date, or if later, the date of the most recent percentage
42 increase. However, in cases providing such a cumulative
43 increase, an actuarial increase may not be provided to reflect
44 the fact that increases were not provided in the interim years;
 - 45 3. To the extent of the reduction in the amount of the member's
46 payments to provide for a survivor benefit upon death, but
47 only if the beneficiary whose life was being used to determine
48 the distribution period described in subsection (c) of this
49 section dies or is no longer the member's beneficiary pursuant
50 to a qualified domestic relations order within the meaning of
51 section 414(c) of the Internal Revenue Code.

- 1 4. To pay increased benefits that result from an amendment to
2 the Association; or
- 3 5. To allow a beneficiary to convert the survivor portion of a
4 joint and survivor annuity into a single sum distribution upon
5 the member's death.
- 6 (2) Amount required to be distributed by required beginning date. – The amount
7 that must be distributed on or before the member's required beginning date,
8 or if the member dies before distributions begin, the date distributions are
9 required to begin under sub-subdivisions a. or b. of subdivision (2) of
10 subsection (a) of this section is the payment that is required for one payment
11 interval. The second payment need not be made until the end of the next
12 payment interval even if that payment interval ends in the next calendar
13 year. Payment intervals are the periods for which payments are received,
14 such as bimonthly, monthly, semiannually, or annually. All of the member's
15 benefit accruals as of the last day of the first distribution calendar year shall
16 be included in the calculation of the amount of the annuity payments for
17 payment intervals ending on or after the member's required beginning date.
- 18 (3) Additional accruals after first distribution calendar year. – Any additional
19 benefits accruing to the member in a calendar year after the first distribution
20 calendar shall be distributed beginning with the first payment interval ending
21 in the calendar year immediately following the calendar year in which such
22 amount accrues.
- 23 (c) Requirements for Annuity Distributions that Commence during Member's Lifetime.
24 –
- 25 (1) Joint life annuities where the beneficiary is not the member's spouse. – If the
26 member's interest is being distributed in the form of a joint and survivor
27 annuity for the joint lives of the member and a nonspouse beneficiary,
28 annuity payments to be made on or after the member's required beginning
29 date to the designated beneficiary after the member's death must not at any
30 time exceed the applicable percentage of the annuity payment for that period
31 that would have been payable to the member using the table set forth in
32 Q&A-2 of section 1.401(a)(9)-6 of the Treasury Regulations. The applicable
33 percentage is based upon the adjusted age difference between the member
34 and the beneficiary. The adjusted age difference between the member and
35 the beneficiary is determined by first calculating the excess of the age of the
36 member over the age of the beneficiary based upon their ages on their
37 birthdays in a calendar year. Then, if the member is younger than age 70, the
38 age difference determined in the previous sentence is reduced by the number
39 of years that the member is younger than age 70 on the member's birthday in
40 the calendar year that contains the annuity starting date. If the form of
41 distribution combines a joint and survivor annuity for the joint lives of the
42 member and a nonspouse beneficiary and a period certain annuity, the
43 requirement in the preceding sentence shall apply to annuity payments to be
44 made to the designated beneficiary after the expiration of the period certain.
- 45 (2) Period certain annuities. – Unless the member's spouse is the sole designated
46 beneficiary and the form of distribution is a period certain and no life
47 annuity, the period certain for an annuity distribution commencing during
48 the member's lifetime may not exceed the applicable distribution period for
49 the member under the Uniform Lifetime Table set forth in section
50 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains
51 the annuity starting date. If the annuity starting date precedes the year in

1 which the member reaches age 70, the applicable distribution period for the
2 member is the distribution period for age 70 under the Uniform Lifetime
3 Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations plus the
4 excess of 70 over the age of the member as of the member's birthday in the
5 year that contains the annuity starting date. If the member's spouse is the
6 member's sole designated beneficiary and the form of distribution is a period
7 certain and no life annuity, the period certain may not exceed the longer of
8 the member's applicable distribution period, as determined under subsection
9 (b) of this section, or the joint life and last survivor expectancy of the
10 member and the member's spouse as determined under the Joint and Last
11 Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury
12 Regulations, using the member's and spouse's attained ages as of the
13 member's and spouse's birthdays in the calendar year that contains the
14 annuity starting date.

15 (d) Requirements for Minimum Distributions where Member Dies before Date
16 Distributions Begin –

17 (1) Member survived by designated beneficiary. – If the member dies before the
18 date distribution of the member's interest begins and there is a designated
19 beneficiary, the member's entire interest will be distributed, beginning no
20 later than the time described in sub-subdivision a. or b. of subdivision (2) of
21 subsection (a) of this section, over the life of the designated beneficiary or
22 over a period certain not exceeding:

23 a. Unless the annuity starting date is before the first distribution
24 calendar year, the life expectancy, as defined in subdivision (4) of
25 subsection (e) of this section, of the designated beneficiary
26 determined using the beneficiary's age as of the beneficiary's birthday
27 in the calendar year immediately following the calendar year of the
28 member's death; or

29 b. If the annuity starting date is before the first distribution calendar
30 year, the life expectancy of the designated beneficiary determined
31 using the beneficiary's age as of the beneficiary's birthday in the
32 calendar year that contains the annuity starting date.

33 (2) No designated beneficiary. – If the member dies before the date distributions
34 begin and there is no designated beneficiary as of September 30 of the year
35 following the year of the member's death, distribution of the member's entire
36 interest will be completed by December 31 of the calendar year containing
37 the fifth anniversary of the member's death.

38 (3) Death of surviving spouse before distributions to surviving spouse begin. –
39 If the member dies before the date distribution of the member's interest
40 begins, the member's surviving spouse is the member's sole designated
41 beneficiary, and the surviving spouse dies before distributions to the
42 surviving spouse begin, this subsection will apply as if the surviving spouse
43 were the member, except that the time by which distributions must begin
44 will be determined without regard to subdivision (1) of subsection (a) of this
45 section.

46 (e) Definitions. –

47 (1) Designated beneficiary. – The individual who is designated as the
48 beneficiary under the Association in accordance with section 401(a)(9) of
49 the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4 of the
50 Treasury Regulations.

- 1 (2) Distribution calendar year. – A calendar year for which a minimum
2 distribution is required. For distributions beginning before the member's
3 death, the first distribution calendar year is the calendar year immediately
4 preceding the calendar year that contains the member's required beginning
5 date. For distributions beginning after the member's death, the first
6 distribution date is the calendar year in which distributions are required to
7 begin pursuant to subsection (a) of this section.
- 8 (3) Eligible cost-of-living index. – One of the following:
- 9 a. A consumer price index that is based on prices of all items, or all
10 items excluding food and energy, and is issued by the Bureau of
11 Labor Statistics, including an index for a specific population, such as
12 urban consumers or urban wage earners and clerical workers, and an
13 index for a geographic area or areas, such as a given metropolitan
14 area or state.
- 15 b. A percentage adjustment based on a cost-of-living index described in
16 sub-subdivision a. of this subdivision, or a fixed percentage if less. In
17 any year in which the cost-of-living index is lower than the fixed
18 percentage, the fixed percentage may be treated as an increase in an
19 eligible cost-of-living index, provided it does not exceed the sum of:
- 20 1. The cost-of-living index for that year; and
21 2. The accumulated excess if the annual cost-of-living index
22 from each prior year over the fixed annual percentage used in
23 that year, reduced by any amount previously used under this
24 sub-subdivision.
- 25 c. A percentage adjustment based on the increase in compensation for
26 the position held by the member at the time of retirement, and
27 provided under either the terms of a governmental plan within the
28 meaning of section 414(d) of the Internal Revenue Code or under the
29 terms of a nongovernmental plan in effect on April 17, 2002.
- 30 (4) Life expectancy. – Life expectancy as computed by use of the Single Life
31 Table in section 1. 401(a)(9)-9 of the Treasury Regulations.
- 32 (5) Required beginning date. – April 1 of the calendar year following the later of
33 (i) the calendar year in which the member attains age 70 1/2; or (ii) the
34 calendar year in which the member retires. Notwithstanding the foregoing,
35 the required beginning date of a member who is a five percent (5%) owner,
36 as defined in section 416 of the Internal Revenue Code, shall be April 1 of
37 the calendar year following the calendar year in which the member attains
38 age 70 1/2. In the event that, as of the required beginning date, the amount of
39 the payment to commence cannot be determined or the recipient of the
40 payment cannot be located after a reasonable effort has been made to locate
41 the recipient, payments retroactive to the required beginning date shall be
42 made within 60 days after the amount has been determined or the recipient
43 has been located, whichever is applicable.

44 **"Sec. 29.** The fiscal year of the Association shall end on June 30 of each year.

45 **"Sec. 30.** Throughout this act, use of the masculine pronoun shall include the feminine.

46 **"Sec. 31.** If any part or section of this act shall be declared unconstitutional or invalid by the
47 Supreme Court of North Carolina or any other court of last resort of competent jurisdiction it
48 shall in no wise affect the remainder of this act, and the remainder shall remain in full force and
49 effect.

50 **"Sec. 32.** All the laws and clauses of laws in conflict with the provisions of this act are
51 hereby repealed."

1 **SECTION 1.(b)** None of the provisions of Section 1(a) of this act shall create an
2 additional liability for the Winston-Salem Firemen's Retirement Fund Association unless
3 sufficient funds are available to pay fully for the liability.

4 **SECTION 2.(a)** Chapter 551 of the 1983 Session Laws is repealed.

5 **SECTION 2.(b)** All funds remaining in the New Bern Firemen's Supplemental
6 Retirement Fund are transferred to the Board of Trustees of the Local Firemen's Relief Fund of
7 the City of New Bern, to be held and administered as provided in Article 84 of Chapter 58 of
8 the General Statutes.

9 **SECTION 3.** This act becomes effective July 1, 2012.