

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 506
HOUSE BILL 509

AN ACT TO REVISE AND REWRITE CHAPTER 926, 1947 SESSION LAWS, AS AMENDED, PERTAINING TO THE CHARLOTTE FIREMEN'S RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 926, 1947 Session Laws, as amended, is rewritten to read:
"TITLE I. PREFACE.

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

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

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

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

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

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

(5) 'Audit' means an examination of the accounting records of the System performed by a certified public accountant or certified public accounting firm. Such

examination is to determine if said records are properly maintained and to make recommendations and suggestions for better record-keeping and management.

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

(7) 'Board of Trustees', 'Board' or 'Trustee' means the Board of Trustees of the Charlotte Firefighters' Retirement System, as specified in Section 6.03, or any individual member thereof.

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

(9) 'Compensation' means the remuneration earned by a Member for services performed as an employee of the Charlotte Fire Department and for which contributions are made to the System. Compensation shall include regular wages, longevity pay, overtime (hire-back) pay, bonus payments, funeral leave, jury duty, used vacation pay, used sick leave, paid military reserve duty (paid by City), used compensatory and court time, and used holiday pay. Compensation also includes any amounts for which contributions are made by a Member to receive Membership Service Credit for any period(s) of workers' compensation and/or accident and sickness benefits. Compensation does not include terminal payments for unused sick leave, unused vacation pay, unused compensatory and court time, and/or unused holiday pay. Also, Compensation does not include worker's compensation payments and/or supplemental payments from the City, accident and sickness benefits, reimbursement for scheduled and/or unscheduled mileage, and/or remuneration from the City for services performed outside his employment with the Charlotte Fire Department. For the purpose of calculating a Member's Final Average Salary, any lump sum payments for which contributions were made to the System, such as longevity pay and bonus payments, and received by said Member within two consecutive years of Membership Service shall be apportioned over the previous Membership Service for which the payment(s) was earned.

(10) 'Effective Date' of this amended and restated act means July 1, 1987, unless otherwise specified herein.

(11) 'Final Average Salary' means the monthly average Compensation received by a Member any two consecutive years of Membership Service which produces the highest average and is contained within the Member's last five years of Membership Service. If a Member has less than two years of Membership Service, his Final Average Salary shall mean the monthly average Compensation for his total Membership Service.

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

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

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

(15) 'Member' means a uniformed employee of the Charlotte Fire Department.

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

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

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

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

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

(21) 'Year' or 'Plan Year' means the twelve months from July 1st through June 30th.

"TITLE II. MEMBERSHIP SERVICE CREDIT.

Sec. 3. **General.** A Member of this Retirement System shall receive Membership Service Credit for all periods of employment with the Charlotte Fire Department for which contributions have been paid to, and not subsequently refunded by, the Charlotte Firefighters' Retirement System. In no case shall more than one year of Membership Service Credit be credited a Member for any 12 calendar month period of time. Membership Service Credit shall not be credited a Member after said Member attains age 70 years.

Sec. 4. **Periods of Worker's Compensation & Accident and Sickness Benefits.** Membership Service Credit shall be credited to a Member for any periods of workers' compensation and/or accident and sickness benefits for which said Member contributes to the Charlotte Firefighters' Retirement System an amount equal to the Compensation the Member would have earned multiplied by the sum of the then current social security contribution rate and five percent (5%). Such contributions must be made within a 12 calendar month period from and after the date the Member returns to employment with the Charlotte Fire Department and prior to the Member's termination of membership or retirement.

Sec. 5. **Reinstatement of Membership Service Credit Previously Forfeited.** Membership Service Credit shall be credited for previous Membership Service for a Member who is reemployed by the Charlotte Fire Department within five years of the termination date of his previous employment, and provided the Member has not received reimbursement of his Total Contributions pursuant to the provisions of this act. Any Member who is reemployed by the Charlotte Fire Department on or before December 31, 1958, shall receive Membership Service Credit for all previous membership employment in said department. Any Member who was reemployed by the Charlotte Fire Department after December 31, 1958, and has previously received reimbursement of his Total Contributions pursuant to the provisions of this act, shall receive no Membership Service Credit for any previous membership employment with the Charlotte Fire Department.

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

Sec. 7. **Purchase of Active Military Duty.** Membership Service Credit may be purchased for credit upon the completion of ten or more years of Membership Service Credit, prior to termination of membership or retirement, by any Member who served on active duty in the Armed Forces of the United States of America prior to his employment with the Charlotte Fire Department. The amount of Membership Service Credit to be credited to a Member will be equal to the actual active military duty by the Member not to exceed five years and shall be credited upon the payment of the required contributions as determined by the Administrator. The required contributions shall be an amount equal to the annualized Compensation rate the Member earned when he first entered membership in the Retirement System, multiplied by the sum of the Member and the City of Charlotte contribution rates in effect at the time when he first entered membership in the Retirement System, increased by five percent (5%) compounded per annum from the date of membership to the date of the payment of the required contributions and multiplied by the number of years and days of Membership Service to be credited.

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

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

"TITLE III. TERMINATION OF MEMBERSHIP.

Sec. 10. **Members With Less Than Ten Years of Membership Service Credit.**
(a) If a Member with less than ten years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said former Member shall thereupon cease membership and shall be entitled to reimbursement of the Total Contributions made by or on his behalf to the Retirement System, excluding any contributions made on the former Member's behalf by the City of Charlotte under the provisions of Section 25 of

this act without interest. A former Member desiring reimbursement of said contributions must complete and file the form 'Application for Refund of Accumulated Contributions' with the Administrator within five years of the termination date of his employment. Should a former Member fail to complete and file said form with the Administrator within such five years, the Former Members shall receive reimbursement of said contributions.

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

Sec. 11. Members With Ten or More Years of Membership Service Credit. (a) Effective July 1, 1986, if a Member with ten or more years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said Member shall receive his Accrued Benefit and defer such benefit until the Participant reaches age 60 years. The Accrued Benefit shall be calculated pursuant to the provisions of Sections 15 and 17 of this act in effect on the last day of work by said Participant. If such Participant dies before applying for his deferred benefits and attaining age 60 years, reimbursement of the Participant's contributions may be accomplished in the same manner and in all respects as Section 10 of this act.

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

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

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

Sec. 13. Member Attaining Age 70 Years. A Member, upon the attainment of age 70 years, shall thereupon cease membership in the Charlotte Firefighters' Retirement System.

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

"TITLE IV. BENEFITS.

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

(1) The age and Membership Service Credit requirements for service retirement are as follows:

- a. Any age and 30 or more years of Membership Service Credit;
- b. Age 50 years or older and 25 or more, but less than 30 years of Membership Service Credit; or
- c. Effective July 1, 1986, age 60 years or older and 10 or more years of Membership Service Credit.

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

Sec. 16. **Compulsory Retirement.** A Member shall be retired upon attaining age 70 years and shall be paid a benefit as provided in Section 17.

Sec. 17. **Computation of Benefits.** (a) Upon retirement pursuant to the provisions of Sections 15 or 16, a Member shall receive a monthly benefit equal to two and four-tenths percent (2.4%) of his Final Average Salary multiplied by his Membership Service Credit, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. The benefit payable pursuant to this subsection shall be referred to as the basic benefit. The effective date of this subsection is July 1, 1986.

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

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

(d) Option 2. 100% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(e) Option 3. 75% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death seventy-five percent (75%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(f) Option 4. 66 2/3% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death sixty-six and two-thirds percent (66 2/3%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(g) Option 5. 50% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death fifty percent (50%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(h) Option 6. A Retiree may elect any of Options 2 through 5 with the added provision that in the event the Designated Beneficiary predeceases the Retiree, the monthly benefit payable to the Retiree after the Beneficiary's death shall be equal to the basic benefit.

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

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

Sec. 19. Disability Retirement in the Line of Duty. (a) A Member whom the Board of Trustees finds to be totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department, may be retired by the Board of

Trustees upon the filing of an 'Application for Disability Retirement in the Line of Duty' by the Member or his department head with the Administrator, provided that:

(1) The Member has applied for and been granted worker's compensation benefits on account of such disability; and

(2) After a medical examination of the Member, by or under the direction of the Medical Board, the Medical Board certifies to the Board in writing that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department.

(b) The Board of Trustees shall retire the Member within 90 days of its receipt of a medical report from the Medical Board that meets the requirements of subdivision (a)(2) of this section and when the Medical Board and the Board agree on such application.

(c) Upon the request by the Chairman or the Board, the examining member of the Medical Board on an application for disability retirement in the line of duty shall appear at a meeting of the Board to respond to any questions of a medical nature or to render any medical opinion necessary to clarify the medical report.

(d) In the event that the Medical Board shall certify that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department and the Board of Trustees does not agree with such certification, the Board of Trustees shall deny such application. The Member shall upon such denial be given the opportunity to respond to the Board's decision. The Member shall have the right to appeal such denial to the Civil Service Board who shall render a decision on whether the Member should or should not be retired.

(e) The determination by the Board of Trustees that a Member is not entitled to disability retirement benefits under this Section provided that the Civil Service Board has not determined that he should be retired shall not prohibit such Member from filing another 'Application for Disability Retirement in the Line of Duty' at a later date, provided the application is based on additional or different facts bearing on the question of his disability.

(f) The Board of Trustees shall have the authority and may require any disability Retiree who has not attained age 70 years to undergo a medical reexamination at any time not to exceed one reexamination per year by or under the direction of the Medical Board to determine if the medical condition for which the disability Retiree was retired still exists. Upon such medical reexamination, if the disability Retiree is found able to perform active duty with the Charlotte Fire Department by the Board of Trustees, he shall be reinstated in a position equal in rank to his rank at the time he was retired. Refusal by the disability Retiree to submit to such medical reexamination or refusal to return to work as a result of finding by the Board of Trustees based on a medical reexamination shall cause all retirement benefits to cease forthwith and such

person shall be entitled to apply for reimbursement of the balance, if any, of his contributions to the Retirement System in the same manner and in all respects as in Section 10 of this act.

(g) Effective July 1, 1986, upon retirement pursuant to the provisions of this Section, a Member shall receive a monthly benefit equal to seventy-two percent (72%) of his Final Average Salary, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Effective July 1, 1987, upon retirement pursuant to the provisions of this Section, a Member shall receive a monthly benefit equal to the greater of seventy-two percent (72%) or two and four-tenths percent (2.4%) multiplied by his Membership Service, of his Final Average Salary, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Benefits payable under this Section shall be effective on the date of approval by the Board of Trustees or upon exhaustion of worker's compensation benefits, whichever is later.

Sec. 20. Disability Retirement not in the Line of Duty. (a) A Member, with 10 or more years of Membership Service Credit, whom the Board of Trustees finds to be totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease that did not arise out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department, may be retired by the board of Trustees upon the filing of an 'Application for Disability Retirement Not in the Line of Duty' by the Member or his department head with the Administrator, provided that:

- (1) The Member has applied for and been granted accident and sickness benefits on account of such disability; and
- (2) After a medical examination of the Member, by or under the direction of the Medical board, the Medical Board certifies to the board in writing that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease that did not arise out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department.

(b) The Board of Trustees shall retire the Member within 90 days of its receipt of a medical report from the Medical Board that meets the requirements of subdivision (a)(2) of this section and when the Medical Board and the board agree on such application.

(c) Upon the request by the Chairman or the board, the examining member of the Medical board on an application for disability retirement not in the line of duty shall appear at a meeting of the board to respond to any questions of a medical nature or to render any medical opinion necessary to clarify the medical report.

(d) In the event that the Medical Board shall certify that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease that did not arise out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department and the Board of Trustees does not agree with such certification, the

Board of Trustees shall deny such application. The Member shall upon such denial be given the opportunity to respond to the board's decision. The Member shall have the right to appeal such denial to the Civil Service Board who shall render a decision on whether the Member should or should not be retired.

(e) The determination by the board of Trustees that a Member is not entitled to disability retirement benefits under this section and the Civil Service board has not determined that he should be retired, shall not prohibit such Member from filing another 'Application for Disability Retirement Not in the Line of duty' at a later date, provided the application is based on additional or different facts bearing on the question of his disability.

(f) The Board of Trustees shall have the authority and may require any disability Retiree who has not attained age 70 to undergo a medical reexamination at any time not to exceed one reexamination per year by or under the direction of the Medical board to determine if the medical condition for which the disability Retiree was retired still exists. Upon such medical reexamination, if the disability Retiree is found able to perform active duty with the Charlotte Fire Department by the Board of Trustees, he shall be reinstated in a position equal in rank to his rank at the time he was retired. Refusal by the disability Retiree to submit to such medical reexamination or refusal to return to work as a result of a finding by the Board of Trustees based on a medical reexamination shall cause all retirement benefits to cease forthwith and such person shall be entitled to apply for reimbursement of the balance, if any, of his contributions to the Retirement System in the same manner and in all respects as in Section 10 of this act.

(g) Effective July 1, 1986, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to thirty-six percent (36%) of his Final Average Salary, plus one and eight-tenths percent (1.8%) of his Final Average Salary multiplied by the Membership Service Credit in excess of 10 years, not to exceed one hundred percent (100%) of his Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Benefits payable under this section shall be effective on the date of approval by the Board of Trustees.

Sec. 21. **Death Benefits.** (a) In the event of the death of any Member of the System prior to his effective date of retirement pursuant to the provisions of Sections 15, 16, 18, 19, or 20 of this act, his Designated Beneficiary(s) on file with the Retirement System, or his personal representative in the absence of any Designated Beneficiary, shall be entitled to reimbursement of the total Contributions by him and the City of Charlotte to the System, plus, effective July 1, 1986, two and five-tenths percent (2.5%) interest compounded annually on the contribution balance at the beginning of each Plan Year. Such Beneficiary(s) or personal representative must complete and file the form 'Application for Survivor Death Benefits' with the Administrator to receive reimbursement. As an option, a Beneficiary may elect to receive an annuity equal to and in lieu of a lump sum distribution by so designating on the above form.

(b) In the event of the death of a Retiree of this System before he has received monthly benefit payments equal to the present value on the effective date of retirement of the total Contributions by him and the City of Charlotte to the system,

plus, effective July 1, 1986, two and five-tenths percent (2.5%) interest compounded annually on the contribution balance at the beginning of each Plan Year and provided a monthly benefit is not payable in accordance with Section 17, the Designated Beneficiary(s) or estate of the Retiree shall be entitled to an amount equal to the difference between such contributions, plus interest, and the sum of the monthly benefit payments received by the Retiree. Such Beneficiary(s) or personal representative must complete and file the form 'Application for Survivor Death Benefits' with the Administrator to receive reimbursement.

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

Sec. 23. Post-Retirement Adjustments. The retirement benefits payable to a Retiree pursuant to the provisions of this act may be adjusted at the discretion of the Board of Trustees based upon the prevailing economic and funding conditions. Such adjustment shall not be paid until such adjustment is ratified by the City of Charlotte.

"TITLE V. METHOD OF FINANCING.

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

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

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

Sec. 25. City of Charlotte Contributions. (a) The City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System an amount equal to the Member's Compensation multiplied by the sum of the then current social security contribution rate and five percent (5%), for each and every payroll of such Member.

(b) Should any Member of this Retirement System enter the Armed Forces of the United States of America, the City of Charlotte shall contribute to the Charlotte

Firefighters' Retirement System for each and every payroll an amount equal to the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to subsection (a) of this section for a period not to exceed the lesser of the Member's actual period of active military duty or five years.

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

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

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

"TITLE VI. ADMINISTRATION BY BOARD OF TRUSTEES.

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

Sec. 28. **Body Politic and Corporate.** The Board of Trustees shall be a body politic and corporate under the name of the Board of Trustees of the Charlotte Firefighters' Retirement System and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, receive, demand and possess all kinds of property hereinafter specified, and to bargain, sell, grant, transfer or dispose of all such property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, specifically, but not limited to, income, license, machinery, franchise and sales taxes.

Sec. 29. **Board of Trustees.** The Board of Trustees shall consist of 10 Trustees, as follows: (i) City Manager, or some other City department head or employee as duly designated by the City Manager; (ii) City Finance Director, or a deputy finance director as duly designated by the City Finance Director; (iii) City Treasurer; (iv) a Chairman of the Board and three Trustees to represent the public and who are residents of Mecklenburg County and who are appointed by the Resident Judge of the Superior Court of Mecklenburg County and who shall hold office for a period of three years or until their successor shall have been appointed and been qualified; and (v) three Members of the Retirement System to be elected by a Majority Vote of the Members of the Retirement System for a term of three years. The terms of office for elected

Trustees shall be graduated so that only one Trustee's term shall expire each year. Any Member shall be eligible to succeed himself as a Trustee.

Sec. 30. Election of Member Trustees. The elections of the member Trustees as provided for in Section 29(v) shall be administered in accordance with rules and regulations adopted by the Board of Trustees from time to time.

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

Sec. 32. Vacancy on Board of Trustees. (a) In the event that an elected Trustee of the Board shall make application for benefits under this act he shall first submit a written notice to the Chairman of the Board disqualifying himself from his trusteeship.

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

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

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

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

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

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

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

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

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

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

(b) The Chairman or, in the absence of the Chairman, the Vice Chairman may hold a special meeting and/or an emergency meeting at his discretion. Additionally, upon the written request of two members of the Board of Trustees, the Chairman shall call a special meeting of Board.

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

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

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

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

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

(a1) **Actuary.** The Board of Trustees shall annually request the City to employ a qualified Actuary to perform such studies and evaluations of the Charlotte Firefighters' Retirement System as may be necessary and/or desirable by the Board or

City in connection with the administration of the System. Within the meaning of this subsection, a qualified Actuary shall be an Actuary who has been enrolled by the Joint Board for the Enrollment of Actuaries and shall be an associate, member, or fellow of the conference of Actuaries in Public Practice or a member of the American Academy of Actuaries.

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

(c) **Legal Counsel.** The City attorney and staff shall be the legal advisor to the Board of Trustees.

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

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

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

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

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

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

Sec. 40. **Authority of City of Charlotte to Recommend Changes to the Retirement System.** The City may recommend to the General Assembly of the State of North Carolina changes to the Retirement System. All recommendations for changes must be actuarially sound and must take into account the interest of all Participants in the System.

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

"TITLE VII. RECORD-KEEPING AND REPORTING REQUIREMENTS.

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

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

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

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

Sec. 46. **Annual Report to Members.** A copy of the report required by Section 45 shall be provided to each of the fire stations and Fire Department administrative offices of the City of Charlotte.

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

"TITLE VIII. CUSTODY AND INVESTMENT OF SYSTEM ASSETS.

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

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

written request of the Administrator, or the Secretary of the Board in the absence of an administrator. The Treasurer shall furnish such bond as shall be required by the Board of Trustees and premium for said bond shall be paid out of the funds of the System.

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

(1) Discharge its duties solely in the interest of the Participants and the Beneficiaries;

(2) Act with the same care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims;

(3) Act with due regard for the management, reputation and stability of the issuer and the character of the particular investments being considered;

(4) Make investments for the exclusive purpose of providing benefits to Participants and Participants' Beneficiaries;

(5) Give appropriate consideration to those facts and circumstances the Board of Trustees knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the System's investments for which the Board of Trustees has responsibility, and shall act accordingly. Appropriate consideration shall include, but is not limited to, a determination by the Board of Trustees that a particular investment or investment course of action is reasonably designed as part of the investments of the System to further the purposes of the System taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or the investment course of action:

a. The diversification of the investments of the system;

b. The liquidity and current return of the investments of the System relative to the anticipated cash flow requirements of the System; and

c. The projected return of the investments of the System relative to the funding objections of the System;

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

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

(8) May utilize the services of Investment Fiduciaries to manage the assets of the System. These Investment Fiduciaries shall be subject to the terms, conditions,

and limitations provided in this section and any limitations as set forth by the Board of Trustees.

"TITLE IX. RESTRICTIONS.

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

(1) No part of the funds contributed to the Retirement System pursuant to this act, or the income thereon, may be used for, or diverted to, purposes other than for the exclusive benefit of Participants of the Retirement System.

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

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

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

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

- a. Ninety thousand dollars (\$90,000) (or, beginning January 1, 1988), such larger dollar amount as the Commissioner of Internal Revenue may prescribe. Such amount shall be the maximum annual benefit pursuant to this subdivision a. for that calendar year and shall apply to the limitation year ending with or within that calendar year.
- b. The average annual Compensation the Participant received from the City during the two consecutive calendar years which would produce the highest such average.

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

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

thousand dollars (\$75,000) benefit limitation for age 55, if the benefit begins prior to such age.

For purposes of this subdivision (4), if benefits begin before age 62, the maximum annual benefit payable shall be adjusted by an interest rate assumption not less than the greater of five percent (5%) or the rate specified in the Retirement System. If payment of a Participant's benefit begins after age 65, the maximum annual benefit payable shall be adjusted by an interest rate assumption not greater than the lesser of five percent (5%) or the rate specified in the Retirement System.

In the event a Participant is covered by one or more defined benefit plans maintained by the City, all such plans shall be aggregated in determining whether the maximum benefit limitations hereunder have been met. Further, the maximum retirement allowance as noted above may be decreased as determined necessary by the City to ensure that all plans will remain qualified under the Internal Revenue Code of 1986, as amended from time to time.

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

(5) Any benefit payable to a Participant pursuant to Section 4 of this act shall commence not later than the April 1 immediately following the calendar year in which the Participant attains age 70 1/2 or, if later, the April 1 immediately following the calendar year in which the Participant terminates service. Additionally, the distribution of any such benefit must satisfy the minimum distribution requirements set forth in this paragraph and must be consistent with Treasury Regulations, as of the required beginning date. The minimum distribution for a calendar year equals the Participant's nonforfeitable Accrued Benefit at the beginning of the year divided by the Participant's life expectancy or, if applicable, the joint and last survivor expectancy of the participant and his Designated Beneficiary. The minimum distribution shall be computed by using the life expectancy multiples under Treasury Regulation 1.72-9. The minimum distribution for a calendar year subsequent to the first calendar year for which a minimum distribution is required may be computed by redetermining the applicable life expectancy. However, there shall be no redetermination of the joint life and last survivor expectancy of the Participant and a nonspouse Designated Beneficiary in a manner which takes into account any adjustment to a life expectancy other than the Participant's life expectancy. A distribution to the Participant in the form of a life annuity, joint and survivor annuity, or an annuity over a fixed period will satisfy the minimum distribution requirements of this paragraph if the method of distribution provides non-increasing payments or otherwise satisfies Treasury Regulations. If the Participant dies after the payment of his benefit has commenced, the death benefit provided by this act shall be paid over a period which does not exceed the payment period which had commenced. If a Participant dies prior to the time the payment of his

benefit commences, the death benefit provided by this act shall be paid over a period not exceeding: (i) five years after the date of the Participant's death; or (ii) if the Beneficiary is a Designated Beneficiary, over the Designated Beneficiary's life or life expectancy. No payment of benefit over a period described in (ii) shall be permitted, unless the payment of such benefit to the Designated Beneficiary will commence no later than one year after the date of the Participant's death, or, if later, and the Designated Beneficiary is the Participant's surviving spouse, the date the Participant would have attained age 70 1/2. The life expectancy multiples under Treasury Regulation 1.72-9 shall be used for purposes of applying this paragraph. The life expectancy of a Participant's surviving spouse may be recalculated not more frequently than annually, but the life expectancy of a nonspouse Designated Beneficiary may not be recalculated after the commencement of payment of benefits to the Designated Beneficiary. Any amount paid to a Participant's child, which becomes payable to the Participant's surviving spouse upon the child's attaining the age of majority, shall be treated as paid to the Participant's surviving spouse for purposes of applying this paragraph.

"TITLE X. Miscellaneous.

Sec. 52. **Liabilities of Trustees.** No member of the Board of Trustees shall be personally liable by reason of his service as a Trustee for any acts performed by him as a Trustee, except for malfeasance in office.

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

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

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

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

Sec. 56. **Subrogation Provisions.** In the event a Member becomes entitled to benefits pursuant to the provisions of this act as a result of an accident, injury or disease

caused by the act of a third party, the Charlotte Firefighters' Retirement System shall be subrogated to all rights of recovery by said Member or said Member's Beneficiary(s) against such third party to the extent of the benefits the Retirement System pays or is obligated to pay.

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

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

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

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

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.