

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 524\***

Short Title: Amend Charlotte Firefighters' Retirement Act. (Local)

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Sponsors: Senators Odom; Clodfelter, Dannelly, and Rucho.

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Referred to: Pensions & Retirement and Aging.

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March 19, 2001

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, and S.L. 1999-100, which rewrote Chapter 926 of the 1947 Session Laws, as amended, reads as rewritten:

"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.

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

(2) 'Actuarial Equivalent' means a benefit payable by the System that is determined by the Actuary to be equal to the basic benefit provided by

1 the System based on the interest rate and the mortality and other tables  
2 and assumptions adopted for such purposes by the Board of Trustees.  
3 In no event shall any Actuarial Equivalent be less than the  
4 corresponding Actuarial Equivalent as of June 30, 1987, based on the  
5 Accrued Benefit and the assumptions in effect on that date.

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

12 (3a) 'Adjustment Factor' means the cost of living adjustment factor  
13 prescribed by the Secretary of the Treasury under section 415(d) of the  
14 Code for years beginning after December 31, 1987, applied to those  
15 items and in the manner the Secretary prescribes.

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

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

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

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

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

31 (8a) 'Code' means the Internal Revenue Code of 1986, as amended.

32 (9) 'Compensation' means the remuneration reportable on Form W-2  
33 earned by a Member for services performed as an employee of the  
34 Charlotte Fire Department ~~and for which contributions are made to the~~  
35 ~~System prior to any reductions pursuant to sections 125, 401(k),~~  
36 ~~402(k), 402(e)(3), 414(h)(2), and 457 of the Internal Revenue Code.~~  
37 ~~Compensation shall include compensation received during the~~  
38 ~~applicable period by the Member from the City for services performed~~  
39 ~~as an employee of the Charlotte Fire Department during the taxable~~  
40 ~~year ending with or within the Plan Year that is required to be reported~~  
41 ~~as wages on the Member's Form W 2. Compensation also includes~~  
42 ~~compensation realized during the applicable period that is not currently~~  
43 ~~includable in the Member's gross income by reason of the application~~  
44 ~~of sections 125, 401(k), 402(a)(8), 402 (h)(1)(B), 403(b), or 457 of the~~

1 ~~Code payments for unused sick and vacation days, longevity~~  
2 ~~payments, bonus payments, and merit increases. For the purpose of~~  
3 ~~calculating a Member's Final Average Salary, any lump sum payments~~  
4 ~~for which contributions were made to the System, such as longevity~~  
5 ~~pay and bonus payments, and received by said Member within two~~  
6 ~~consecutive years of Membership Service shall be apportioned over~~  
7 ~~the previous Membership Service for which the payment(s) was~~  
8 ~~earned.~~ (i) payments for unused sick and vacation days shall be  
9 included as Compensation to the extent that the vacation and sick days  
10 for which payments are made could have accrued during two Plan  
11 Years of the Member's last five years of Membership Service, and (ii)  
12 payments for longevity shall be included as Compensation to the  
13 extent such payments were made during two Plan Years of the  
14 Member's last five years of Membership Service.

15 In addition to the other applicable limitations set forth in this Act,  
16 and notwithstanding any other provision of this Act to the contrary, for  
17 Plan Years beginning on or after January 1, 1996, the annual  
18 Compensation of each Member taken into account under the Act shall  
19 not exceed the OBRA '93 annual compensation limit. The OBRA '93  
20 annual compensation limit is one hundred fifty thousand dollars  
21 (\$150,000), as adjusted by the Commissioner for increases in the cost  
22 of living in accordance with section 401(a)(17)(B) of the Internal  
23 Revenue Code. The cost of living adjustment in effect for a calendar  
24 year applies to any period not exceeding 12 months over which  
25 Compensation is determined ('the determination period') beginning in  
26 each calendar year. If a determination period consists of fewer than 12  
27 months, the OBRA '93 annual compensation limit will be multiplied  
28 by a fraction, the numerator of which is the number of months in the  
29 determination period, and the denominator of which is 12. If  
30 Compensation for any prior determination period is taken into account  
31 in determining a Member's benefits accruing in the current Plan Year,  
32 the Compensation for that prior determination period is subject to the  
33 OBRA '93 annual compensation limit in effect for that prior  
34 determination period. For this purpose, for determination periods  
35 beginning before the first day of the first Plan Year beginning on or  
36 after January 1, 1996, the OBRA '93 annual compensation limit is one  
37 hundred fifty thousand dollars (\$150,000).

38 (9a) 'Death Benefit Recipient' means any person who is in receipt of  
39 benefits payable as specified in Section 21.

40 (10) 'Effective Date' of this amended and restated act means ~~July 1, 1999,~~  
41 July 1, 2001, unless otherwise specified herein.

42 (11) 'Final Average Salary' means the monthly average Compensation  
43 received by a Member during any two consecutive ~~years~~ Plan Years of  
44 Membership Service which produces the highest average and is

1 contained within the Member's last five years of Membership Service.  
2 If a Member has less than two years of Membership Service, his Final  
3 Average Salary shall mean the monthly average Compensation for his  
4 total Membership Service. ~~Effective July 1, 1989, if the Member's~~  
5 ~~monthly benefit, as calculated pursuant to Section 17(a) of this act,~~  
6 ~~exceeds one hundred percent (100%) of his Final Average Salary, as~~  
7 ~~defined by this subdivision, then 'Final Average Salary' means the~~  
8 ~~monthly average Compensation received by a Member during any~~  
9 ~~three consecutive years of Membership Service during which the~~  
10 ~~Member was an active Member of the Retirement System and had the~~  
11 ~~greatest aggregate Compensation from the City. If a Member has fewer~~  
12 ~~than three years of Membership Service, his Final Average Salary shall~~  
13 ~~mean the monthly average Compensation for his total Membership~~  
14 ~~Service.~~ For the purpose of calculating a Member's Final Average  
15 Salary, (i) payments for unused sick and vacation days shall be  
16 included as Compensation to the extent that the vacation and sick days  
17 for which payments are made could have accrued during two Plan  
18 Years of the Member's last five years of Membership Service, and (ii)  
19 payments for longevity shall be included as Compensation to the  
20 extent such payments were made during two Plan Years of the  
21 Member's last five years of Membership Service.

- 22 (12) 'He', 'Him', 'His', and any other pronouns and terms shall be used when  
23 referring to both male and female Members and/or Beneficiaries of  
24 this System, and vice versa.
- 25 (13) 'Investment Fiduciary' means any person, or persons, who exercises  
26 any discretionary authority or control in the investment of the System's  
27 assets and/or renders investment advice for a fee to the System.
- 28 (14) 'Majority Vote' means that number of votes which is more than fifty  
29 percent (50%) of the System Members casting ballots.
- 30 (15) 'Member' means an employee of the Charlotte Fire Department who is  
31 subject to the provisions of the Civil Service Act contained in Chapter  
32 333 of the 1969 Session Laws as amended, and, in addition, shall  
33 include the chief of the fire department where the chief was subject to  
34 the provisions of the Civil Service Act immediately prior to being  
35 appointed fire chief, and any probationary employee or officer of the  
36 fire department under the Civil Service Act.
- 37 (16) 'Membership Service Credit' or 'Membership Service' means the  
38 amount of service credited to a Member as provided in this act to  
39 determine what, if any, benefits are due him.
- 40 (17) 'Participant' means any Member, Retiree, Beneficiary in receipt of  
41 benefits or a former Member with a deferred Accrued Benefit.
- 42 (17a) 'Qualified Participant' means a Participant who is in a defined benefit  
43 plan that is maintained by a State or a political subdivision thereof; and

- 1           a.     Who has at least 15 years of Membership Service Credit as a  
2           full-time employee of any police department or fire department  
3           that is organized and operated by the State or a political  
4           subdivision, that maintains such a defined benefit plan; or  
5           b.     Who is a member of the armed forces of the United States.
- 6           (18) 'Retiree' means any person who retires with a retirement benefit  
7           payable by the System.
- 8           (19) 'Retirement System' or 'System' means the Charlotte Firefighters'  
9           Retirement System.
- 10          (20) 'Total Contributions' means the sum of the amounts paid by or on  
11          behalf of a Member and credited to his individual account by the  
12          System.
- 13          (20a) 'Trustee' means any individual member of the Board of Trustees of the  
14          Charlotte Firefighters' Retirement System, as specified in Section 29 of  
15          this act.
- 16          (21) 'Year,' 'Plan Year,' or 'Limitation Year' means the twelve months from  
17          July 1 through June 30.

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

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

24          Sec. 4. **Periods of Workers' Compensation & Accident and Sickness, Family  
25          Medical Leave Act, and Long-Term Disability Benefits.** Membership Service Credit  
26          shall be credited to a Member for any periods of workers' compensation, accident and  
27          sickness, Family Medical Leave Act, or long-term disability benefits for which said  
28          Member contributes to the Charlotte Firefighters' Retirement System an amount equal to  
29          the Compensation the Member would have earned multiplied by ~~the sum of the then~~  
30          ~~current social security contribution rate plus five percent (5%).~~ twelve and sixty-five  
31          hundredths percent (12.65%). Such contributions must be made within a 12 calendar  
32          month period from and after the date the Member returns to employment with the  
33          Charlotte Fire Department and prior to the Member's termination of membership or  
34          retirement.

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

40          Sec. 6. **Return from Active Military Duty.** Membership Service Credit shall be  
41          credited to any Member who entered the Armed Forces of the United States of America  
42          during World War I, World War II, the Korean War, any period of national emergency  
43          conditions, or entered the Armed Forces at any time through the operation of the  
44          compulsory military service law of the United States of America, upon the return to

1 membership employment with the Charlotte Fire Department. Such Membership  
2 Service Credit shall include the period of active military service and any period after  
3 discharge or release from active duty from the Armed Forces for which his  
4 reemployment rights are guaranteed by law unless otherwise specified in this act.  
5 Notwithstanding any other provision of this section, effective December 12, 1994, this  
6 act shall at all times be construed and enforced according to the requirements of the  
7 Uniformed Services Employment and Reemployment Rights Act of 1994.

8 **Sec. 7. Purchase of Membership Service Credit for Prior Active Military Duty.**  
9 Effective July 1, 1999, Membership Service Credit for prior active military duty may be  
10 purchased upon the completion of five years of Membership Service Credit by any  
11 Member who served on active duty in the Armed Forces of the United States of  
12 America prior to his employment with the Charlotte Fire Department. Such  
13 Membership Credit shall be purchased by the Member before termination of  
14 membership or retirement. The amount of Membership Service Credit that may be  
15 purchased by a Member will be equal to the actual active military duty by the Member  
16 not to exceed five years and shall be credited upon the payment of the required  
17 contributions as determined by the Administrator, provided that the Membership  
18 Service to be so credited shall not be credited in any other retirement system, except the  
19 national guard or any reserve component of the Armed Forces of the United States. The  
20 required contributions shall be an amount equal to the annualized Compensation rate the  
21 Member earned when he first entered membership in the Retirement System, multiplied  
22 by the sum of the Member and the City of Charlotte contribution rates in effect at the  
23 time when he first entered membership in the Retirement System, increased by five  
24 percent (5%) compounded per annum from the date of membership to the date of the  
25 payment of the required contributions and multiplied by the number of years and days  
26 of Membership Service to be credited.

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

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

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

40 **Sec. 10. Members With Less Than Five Years of Membership Service Credit.**  
41 (a) If a Member with less than five years of Membership Service Credit with this  
42 Retirement System shall cease employment with the Charlotte Fire Department,  
43 whether voluntary or involuntary, said former Member shall thereupon cease  
44 membership and shall be entitled to reimbursement of the contributions made by the

1 Member. The former Member shall not be entitled to any contributions made on the  
2 former Member's behalf by the City of Charlotte under the provisions of Section 25 of  
3 this act or to any interest which has accrued on his contributions or any contributions  
4 made on the Member's behalf. A former Member desiring reimbursement of said  
5 contributions must complete and file the form 'Application for Refund of Accumulated  
6 Contributions' with the Administrator within five years of the termination date of his  
7 employment. Should a former Member fail to complete and file said form with the  
8 Administrator within such five years, the former Member shall receive reimbursement  
9 of said contributions as provided in this act.

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

18 **Sec. 11. Members With Five or More Years of Membership Service Credit.** (a)  
19 Effective July 1, 1989, if a Member with five or more years of Membership Service  
20 Credit with this Retirement System ceases employment with the Charlotte Fire  
21 Department, whether voluntarily or involuntarily, the Member shall receive his Accrued  
22 Benefit and defer this benefit until the Participant reaches 60 years of age. The Accrued  
23 Benefit shall be calculated pursuant to the provisions of Sections 15 and 17 of this act in  
24 effect on the last day of work by said Participant. If such Participant dies before  
25 applying for his deferred benefits and attaining age 60 years, reimbursement of the  
26 Participant's contributions may be accomplished in the same manner and in all respects  
27 as in Section 10 of this act.

28 (b) As an alternative to the provisions of subsection (a) of this section, if a  
29 Member with five or more years of Membership Service Credit with this Retirement  
30 System shall cease employment with the Charlotte Fire Department, whether voluntary  
31 or involuntary, said Member shall thereupon cease membership and may elect to receive  
32 reimbursement of his contributions ~~in the same manner and in all respects as in Section~~  
33 ~~10 of this act, plus interest compounded annually at a rate of four percent (4%) per year,~~  
34 with the right reserved to the Board of Trustees to set a different rate from time to time.  
35 The former Member shall not be entitled to any contributions made on the Member's  
36 behalf by the City of Charlotte under the provision of Section 25 of this Act or to any  
37 interest on such contributions.

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

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

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

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

11 (b) Definitions.

12 (1) Eligible rollover distribution. An eligible rollover distribution is any  
13 distribution of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution does not  
15 include: any distribution that is one of a series of substantially equal  
16 periodic payments (not less frequently than annually) made for the life  
17 (or life expectancy) of the distributee or the joint lives (or joint life  
18 expectancies) of the distributee and the distributee's designated  
19 beneficiary, or for a specified period of 10 years or more; any  
20 distribution to the extent such distribution is required under section  
21 401(a)(9) of the Code; any hardship distribution described in section  
22 401(k)(2)(B)(i)(IV); and the portion of any distribution that is not  
23 includable in gross income (determined without regard to the exclusion  
24 for net unrealized appreciation with respect to employer securities).

25 (2) Eligible retirement plan. An eligible retirement plan is an individual  
26 retirement account described in section 408(a) of the Code, an  
27 individual retirement annuity described in section 408(b) of the Code,  
28 an annuity plan described in section 403(a) of the Code, or a qualified  
29 trust described in section 401(a) of the Code, that accepts the  
30 distributee's eligible rollover distribution. However, in the case of an  
31 eligible rollover distribution to the surviving spouse, an eligible  
32 retirement plan is an individual retirement account or individual  
33 retirement annuity.

34 (3) Distributee. A distributee includes an employee or former employee.  
35 In addition, the employee's or former employee's surviving spouse and  
36 the employee's or former employee's spouse or former spouse who is  
37 the alternate payee under a qualified domestic relations order, as  
38 defined in section 414(p) of the Code, are distributees with regard to  
39 the interest of the spouse or former spouse.

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

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



**TITLE IV. ~~BENEFITS~~BENEFITS.**

1  
2       **Sec. 15. Service Retirement.** A Member may upon written application through the  
3 Administrator to the Board of Trustees set forth an effective date of not less than 30  
4 days nor more than 90 days subsequent to the execution and filing thereof that he  
5 desires to be retired, provided that he has attained the age and acquired the required  
6 Membership Service Credit and has been approved by the Board:

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

- 9           a. Any age and 30 or more years of Membership Service Credit;  
10           b. Age 50 years or older and 25 or more, but less than 30 years of  
11 Membership Service Credit; or  
12           c. Effective July 1, 1989, age 60 years or older and 5 or more, but  
13 fewer than 25 years of Membership Service Credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (a) An 'Application for Disability Retirement in the Line of Duty' shall be filed  
43 by the Member or his department head with the Administrator, provided that the

1 Member has applied for and been granted workers' compensation benefits on account of  
2 this disability.

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

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

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

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

41 (b) An 'Application for Disability Retirement not in the Line of Duty' shall be  
42 administered pursuant to rules and regulations adopted by the Board of Trustees from  
43 time to time and approved by the City of Charlotte and administered in a uniform and  
44 nondiscriminatory manner. The Administrator shall request the Board of Trustees to

1 conduct a hearing on the Application for Disability Retirement not in the Line of Duty  
2 pursuant to the provisions of the Disability Regulations. The Member or any person  
3 filing on the Member's behalf or the Administrator may appeal from any order of the  
4 Board to the Superior Court of Mecklenburg County by giving notice of appeal, in  
5 writing, to the Superior Court, within 10 days of the order. The appeal to the Superior  
6 Court shall be upon the record of the proceeding before the Board at the hearing.

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

30 Sec. 21. **Death Benefits.**

31 (a) In the event of the death of any Member of the System prior to his effective  
32 date of retirement pursuant to the provisions of Sections 15, 16, 18, 19, or 20 of this act,  
33 his Designated Beneficiary(s) on file with the Retirement System, or his personal  
34 representative in the absence of any Designated Beneficiary, shall be entitled to  
35 reimbursement of the Total Contributions by him or on his behalf and contributions by  
36 City of Charlotte to the System on his behalf; plus, ~~two and five tenths percent (2.5%)~~  
37 interest compounded annually at the rate of four percent (4%) per year on the  
38 contribution balance at the beginning of each Plan Year in which the Participant  
39 contributed or in which contributions were made on his behalf. ~~The Board of Trustees~~  
40 has the right to set a different interest rate from time to time. ~~However, the two and five-~~  
41 ~~tenths percent (2.5%) interest~~ Interest shall not apply to death benefits occurring before  
42 July 1, 1986. Such Beneficiary(s) or personal representative must complete and file the  
43 form 'Application for Survivor Death Benefits' with the Administrator to receive  
44 reimbursement. As an option, a Beneficiary may elect to receive an annuity equal to

1 and in lieu of a lump sum distribution by so designating on the above form. Effective  
2 July 1, 1989, as an option, a surviving spouse of a deceased Member who was eligible  
3 for a service or early retirement benefit on the date preceding death may elect to receive  
4 an Actuarial Equivalent computed as of the date preceding death in the same manner as  
5 if the deceased member had retired and elected a reduced monthly amount payable  
6 throughout his life, and nominated the surviving spouse as his beneficiary in accordance  
7 with the provisions of Option 4, Sixty-Six and Two-Thirds Percent (66 2/3%) Joint and  
8 Survivor benefit, as set forth in subsection (f) of Section 17. The Actuarial Equivalent  
9 for all benefits payable pursuant to this section shall be computed in accordance with  
10 the Unisex Mortality Table for 1984 set forward one year in age, with interest at six  
11 percent (6%).

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

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

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

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

34 (b) ~~Effective July 1, 1989;~~ July 1, 2001, the Board of Trustees shall make an  
35 annual bonus payment in the month of January ~~following an annual actuarial valuation~~  
36 ~~when the actuary determines that the actual payroll contributions exceed the required~~  
37 ~~contributions adjusted for any actuarial gains and losses that may have occurred during~~  
38 ~~the preceding year. The lesser of fifty percent (50%) of the excess amount determined~~  
39 ~~by the actuary or upon receipt of a fiscal note prepared by the actuary demonstrating that~~  
40 the Retirement System could support such payment in an actuarially sound manner.  
41 Such fiscal note, at a minimum, shall evaluate the effect that granting the bonus  
42 payment will have on the amortization period, the level of unfunded accrued liabilities,  
43 and the annual required contributions. The total amount to be distributed shall be  
44 recommended by the actuary but in all events shall not exceed the aggregate monthly

1 ~~benefit~~ benefits of the Retirees eligible for the ~~bonus shall be distributed.~~ bonus. A  
2 Retiree who has been retired for at least one year as of December 31, preceding  
3 distribution of the bonus, shall receive a bonus that is determined by the Administrator  
4 as proportional of the Retiree's monthly benefit to the aggregate monthly benefits of all  
5 Retirees eligible for the bonus.

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

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

#### 17 TITLE V. METHOD OF FINANCING.

18 Sec. 24. **Member Contributions.** Each Member shall contribute to the Charlotte  
19 Firefighters' Retirement System and the City of Charlotte shall cause to be deducted  
20 from each and every payroll of such Member, an amount equal to the Member's  
21 Compensation multiplied by ~~the sum of the then current social security contribution rate~~  
22 ~~plus five percent (5%).~~ twelve and sixty-five hundredths percent (12.65%).

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

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

39 Sec. 25. **City of Charlotte Contributions.** (a) The City of Charlotte shall  
40 contribute to the Charlotte Firefighters' Retirement System an amount equal to the  
41 Member's Compensation multiplied by ~~the sum of the then current social security~~  
42 ~~contribution rate plus five percent (5%).~~ twelve and sixty-five hundredths percent  
43 (12.65%) for each and every payroll of such Member.

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

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

16 (c1) Should any Member of the Retirement System contribute an amount pursuant  
17 to Section 4 for the purpose of receiving Membership Service Credit for any period of  
18 benefits under the federal Family Medical Leave Act, the City of Charlotte shall  
19 contribute to the Charlotte Firefighters' Retirement System an amount equal to the  
20 Compensation that Member would have earned multiplied by the ~~then-current social~~  
21 ~~security contribution rate plus five percent (5%).~~ contribution rate established in Section  
22 24 of this act.

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

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

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

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

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

1 may be necessary for the protection of the System, the System's assets, and trustees for  
2 acts performed by them as trustees, excluding malfeasance. All expenses for the  
3 purchase or maintenance of insurance shall be borne by the System.

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

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

26 **Sec. 30. Election of Member Trustees.** The elections of the Member Trustees as  
27 provided for in Subsection 29(a) and the Retiree Trustee as provided for in Subsection  
28 29(a) shall be administered in accordance with rules and regulations adopted by the  
29 Board of Trustees from time to time.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

41 When a special meeting is called, the Administrator shall insure that notice is given  
42 to each trustee either in person or by first class mail to the address of record on file with  
43 the Administrator. Such notice shall include the purpose of the meeting and designate

1 the time, date and place thereof. The Chairman or Vice Chairman shall insure that the  
2 business of the special meeting be limited to the purpose as set forth in the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18       **Sec. 46. Annual Report to Participants.** A copy of the report required by Section  
19 45 shall be provided to each of the fire stations and Fire Department administrative  
20 offices of the City of Charlotte. In addition, a copy of the report or portions of the report  
21 shall be provided to the Participants of the System.

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

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

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

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

41       **Sec. 50. Investment/Reinvestment of Funds and Assets.** The Board of Trustees  
42 shall be vested with the authority and responsibility and shall have full power to hold,  
43  
44

1 purchase, sell, assign, transfer, lend and dispose of any of the securities and investments  
2 in which the System shall have been invested, as well as the proceeds of said  
3 investments and any monies belonging to the System. The Board of Trustees as  
4 fiduciaries shall:

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

1 terms, conditions, and limitations provided in this section and any  
2 limitations as set forth by the Board of Trustees.

3 **TITLE IX. RESTRICTIONS.**

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

- 5 (1) No part of the funds contributed to the Retirement System, or the  
6 income thereon, may be used for, or diverted to, purposes other than  
7 for the exclusive benefit of the Participants of the Retirement System  
8 as authorized by the provisions of this ~~act~~, provided that in the  
9 event of the termination of the Retirement System, the City shall  
10 receive any surplus funds or assets after all liabilities of the Retirement  
11 System are satisfied.
- 12 (2) Upon termination of the Retirement System or upon complete  
13 discontinuance of contributions to the Retirement System, the rights of  
14 all Participants of the Retirement System to benefits accrued to the  
15 date of the termination or discontinuance, to the extent then funded,  
16 are nonforfeitable.
- 17 (3) Forfeitures under the Retirement System may not be applied to  
18 increase the benefits that any Participant would otherwise receive  
19 under the Retirement System.
- 20 (4) Notwithstanding any provision of the Retirement System to the  
21 contrary, the maximum annual benefit payable in the form of a straight  
22 life annuity from the Retirement System on behalf of a Participant,  
23 when combined with any benefits from another qualified benefit plan  
24 maintained by the City, shall not exceed the amount as ~~provided in this~~  
25 ~~section. If the normal form of payment is other than a straight life~~  
26 ~~annuity or a qualified joint and survivor annuity, the amount so~~  
27 ~~determined hereunder shall be adjusted on an actuarially equivalent~~  
28 ~~basis to reflect such other payment form.~~
- 29 a. ~~Ninety thousand dollars (\$90,000) (or, beginning January 1,~~  
30 ~~1988), such larger dollar amount as the Commissioner of~~  
31 ~~Internal Revenue may prescribe. Such amount shall be the~~  
32 ~~maximum annual benefit pursuant to this subdivision a. for that~~  
33 ~~calendar year and shall apply to the limitation year ending with~~  
34 ~~or within that calendar year.~~
- 35 b. ~~The average annual compensation the Participant received from~~  
36 ~~the City during the three consecutive calendar years which~~  
37 ~~would produce the highest such average, permitted by section~~  
38 415 of the Internal Revenue Code.
- 39 (5) Any benefit payable to a Participant pursuant to Section 4 of this act  
40 shall commence not later than the April 1 immediately following the  
41 calendar year in which the Participant attains age 70 1/2 or, if later, the  
42 April 1 immediately following the calendar year in which the  
43 Participant terminates service. Additionally, the distribution of any  
44 such benefit must satisfy the minimum distribution requirements set

1           forth in this paragraph and must be consistent with Treasury  
2           Regulations, as of the required beginning date. The minimum  
3           distribution for a calendar year equals the Participant's nonforfeitable  
4           Accrued Benefit at the beginning of the year divided by the  
5           Participant's life expectancy or, if applicable, the joint and last survivor  
6           expectancy of the participant and his Designated Beneficiary. The  
7           minimum distribution shall be computed by using the life expectancy  
8           multiples under Treasury Regulation 1.72-9. The minimum  
9           distribution for a calendar year subsequent to the first calendar year for  
10          which a minimum distribution is required may be computed by  
11          redetermining the applicable life expectancy. However, there shall be  
12          no redetermination of the joint life and last survivor expectancy of the  
13          Participant and a nonspouse Designated Beneficiary in a manner which  
14          takes into account any adjustment to a life expectancy other than the  
15          Participant's life expectancy. A distribution to the Participant in the  
16          form of a life annuity, joint and survivor annuity, or an annuity over a  
17          fixed period will satisfy the minimum distribution requirements of this  
18          paragraph if the method of distribution provides non-increasing  
19          payments or otherwise satisfies Treasury Regulations. If the  
20          Participant dies after the payment of his benefit has commenced, the  
21          death benefit provided by this act shall be paid over a period which  
22          does not exceed the payment period which had commenced. If a  
23          Participant dies prior to the time the payment of his benefit  
24          commences, the death benefit provided by this act shall be paid over a  
25          period not exceeding: (i) five years after the date of the Participant's  
26          death; or (ii) if the Beneficiary is a Designated Beneficiary, over the  
27          Designated Beneficiary's life or life expectancy. No payment of benefit  
28          over a period described in (ii) shall be permitted, unless the payment of  
29          such benefit to the Designated Beneficiary will commence no later  
30          than one year after the date of the Participant's death, or, if later, and  
31          the Designated Beneficiary is the Participant's surviving spouse, the  
32          date the Participant would have attained age 70 1/2. The life  
33          expectancy multiples under Treasury Regulation 1.72-9 shall be used  
34          for purposes of applying this paragraph. The life expectancy of a  
35          Participant's surviving spouse may be recalculated not more frequently  
36          than annually, but the life expectancy of a nonspouse Designated  
37          Beneficiary may not be recalculated after the commencement of  
38          payment of benefits to the Designated Beneficiary. Any amount paid  
39          to a Participant's child, which becomes payable to the Participant's  
40          surviving spouse upon the child's attaining the age of majority, shall be  
41          treated as paid to the Participant's surviving spouse for purposes of  
42          applying this paragraph.

43                                   **TITLE X. MISCELLANEOUS.**

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

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

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

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

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

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

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

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

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

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

44       **SECTION 3.** This act becomes effective July 1, 2001.