

TEX. CODE ANN. § 6243g-4 : Texas Statutes - Article 6243G-4: POLICE OFFICERS PENSION SYSTEM IN CERTAIN MUNICIPALITIES

Purpose

Sec. 1. The purpose of this article is to restate and amend the provisions of former law creating and governing a police officers pension system in each city in this state having a population of 2 ~~1.5~~ million or more, according to the most recent federal decennial census, and to reflect changes agreed to by the city and the board of trustees of the pension system under Section 27 of this article. The pension system shall continue to operate regardless of whether the city's population falls below 2 ~~1.5~~ million.

Definitions

Sec. 2. In this article:

(1) "Active member" means an employee of the city within a person employed as a classified police officer by the police department of a city subject to this article, in a classified or appointed position, unless the person in appointed position opts out of the plan, except for a person who is a part-time, seasonal, or temporary employee or a person who elected to remain a member of a pension system described by Chapter 88, Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes). The term does not include a person who is a member of another pension system of the same city, except to the extent provided by Section ~~15(j)~~ or 18 of this article.

(1-a) "Amortization period" means the time necessary to fully pay a liability layer.

(1-b) "Amortization rate" means the sum of the scheduled amortization payments for a given fiscal year for the current liability layers divided by the projected payroll for that year.

(1-c) "Assumed rate of return" means the assumed market rate of return on pension system assets, which shall initially be 7% per annum.

(2) Repealed by Acts 2017

"Average total direct pay" means an amount determined by dividing the following sum by 12:

(A) the highest biweekly pay received by a member for any single pay period in the last 26 pay periods in which the member worked full time, considering only items of total direct pay that are included in each paycheck, multiplied by 26; plus

~~(B) the total direct pay, excluding all items of the type included in Paragraph (A) received during the same last 26 biweekly pay periods.~~

(3) Repealed by Acts 2017

~~“Base salary” means the monthly base pay provided for the classified position in the police department held by the member.~~

(4) “Board” or “pension board” means the board of trustees of the pension system.

(4-a) “Catastrophic injury” means a sudden, violent, life-threatening, duty-related injury sustained by an active member that is due to an externally caused motor vehicle accident, gunshot wound, aggravated assault, or other external event or events and results, as supported by evidence, in one of the following conditions:

(A) loss of sight in one or both eyes;

(B) loss of use of one or both feet at or above the ankle;

(C) loss of one use of or both hands at or above the wrist;

(D) injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(E) an externally caused physical traumatic injury to the brain rendering the member physically or mentally unable to perform the member’s duties as a police officer.

(4-b) “Census data” means the same census data that is routinely used by the pension system actuary for the pension system’s valuation studies and which is reasonably necessary in connection with the risk sharing provisions of this article and is agreed to by the city and the board.

Commented [WK1]: Don’t know the significance of this data but pension board will control what data is used.

(4-c) “City” or “municipality” means a municipality subject to this article as described in section I of this article.

(4-d) “City actuary” means an actuary from a professional service firm engaged by the municipality who is (a) is not already engaged by any of the city’s pesion systems to actuarial services to the fund or any of the pension systems, (b) has a minimum of 10 years of professional actuarial experience, and (c) is a member of the American Academy of Actuaries or a Fellow of the Society of Actuaries, or any comparable professional organizations which are national organizations for actuaries, and who in carrying out its duties for the city has met the requirements to issue statements of Actuarial Opinion or comparable requirements as may then be generally recognized by actuaries. Notwithstanding anything in this definition, the city actuary need to meet no greater qualifications than those required by the board for the pension system actuary.

Commented [WK2]: Last sentence means pension board will set minimum qualifications.

(4-e) "City contribution rate" means a percent which is the sum of the employer normal cost rate and the amortization rate for liability layers, except as stated otherwise is section 9A of this article, as determined pursuant to the most recent RSVS, which may not exceed the maximum contribution rate or be less than the minimum contribution rate.

(4-f) "City fiscal year" means a fiscal year beginning July 1 and ending June 30, unless a city changes its fiscal year.

(4-g) "Classified" means any person classified by the City as a police officer.

(5) "Code" means the federal Internal Revenue Code of 1986, or any successor, as amended.

(5-a) "Contribution variance" for any city fiscal year means the difference between the projected contribution by the city to the pension system as measured in any RSVS prepared by the pension system actuary and the projected contribution as measured in any RSVS prepared by the city actuary.

(5-b) "Corridor" means the range of city contribution rates that are greater than or equal to the minimum contribution rate and less than or equal to the maximum contribution rate.

(5-c) "Corridor margin" means 5 percentage points.

(5-d) "Corridor midpoint" means the projected city contribution rate for each city fiscal year specified for a city fiscal year in the initial RSVS, and from time to time adjusted as may be specifically authorized in the article, and in each case round to the nearest hundredths decimal place.

(6) "Dependent" means a dependent child or a dependent parent.

(7) "Dependent child" means a deceased member's unmarried natural or adopted child who:

(A) has not attained age 18;

(B) has attained age 18 but not age 24 and is attending school on a full-time basis; or

(C) has attained age 18 and is permanently disabled as the result of a disability that began before the child attained age 18.

(8) "Dependent parent" means a natural parent of a deceased member or an adoptive parent who adopted the member before the member attained age 18 and at least 50 percent of whose support was received from the member during the one-year period preceding the date of death of the member.

(9) "DROP" means the deferred retirement option plan described by Section 14 of this article.

Commented [WK3]: This terminology needs to be cleaned up.

Commented [WK4]: Statutory beginning contribution is going to be determined by third-party document? Section says should be done by March 31. If so, better to insert the actual numbers. If not, does this mean we are going to enact this statute without knowing the results of the initial RSVS.

(10) "Employee" means an individual who holds a classified position in the police department of a city subject to this article.

(10-a) "Employer normal cost rate" means the normal cost rate less the member contribution rate.

(10-b) "Final average pay" means the pay received by a member over the last 78 bi-weekly pay periods ending before the earlier of (1) the member's termination of employment in the police department, divided by 36, or (2) the member's entry date into DROP, divided by 36.

(11) "Former member" means a person who was once an active member, eligible for benefits vested or not, but who terminated active member status and received a refund of member contributions.

(12) "Fund" means the fund originally established by Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes).

(12-a) "Funded ratio" means the ratio of pension system's actuarial value of assets divided by the fund's actuarial liability.

(13) "Inactive member" means a person who has separated from service and is eligible to receive ~~has a vested right to~~ a service pension from the pension system but is not eligible for an immediate service pension. The term does not include a former member.

(13-a) "Initial RSVS" means the RSVS conducted based on census and financial data as of June 30, 2016, as provided in section 9A(c)(5) of this article.

(13-b) "Legacy liability" means UAAL as June 30, 2016, as reduced to reflect (i) changes to benefits or contributions pursuant to this article, and (ii) the deposit of pension obligation bond proceeds on or before December 31, 2017. In each subsequent city fiscal year, the legal liability shall be reduced by contributions for that year allocated to the amortization of the legacy liability and shall be adjusted by the assumed rate of return.

Commented [WK5]: What is mechanism for determining final value of "changes to benefits of contributions"

(13-c) "Level percent of payroll method" means an amortization method that defines the amount of the liability layer recognized each city fiscal year as a level percent of pensionable payroll until the amount of the liability layer remaining is reduced to zero.

Commented [WK6]: Means negative amortization for years – what about methodology – especially assumption on payroll growth

(13-d) "Liability gain layer" means a liability gain layer that decreases the UAAL.

(13-e) "Liability Layer" means a liability gain layer or liability loss layer, as established in each RSVS.

(13-f) "Liability loss layer" means (i) in the initial RSVS, the legacy liability of (ii) a liability layer that increases the UAAL.

Commented [WK7]: 13d-f definitions are circular – each uses "liability layer"

(13-g) "Maximum contribution rate" means the corridor midpoint plus the corridor margin.

(14) "Member" means an active member, inactive member, or retired member, as the context may require. The term does not include a former member.

(14-a) "Minimum contribution rate" means the corridor midpoint minus the corridor margin.

(14-b) "Normal cost" means the actuarial present value of the projected benefits that are attributed to the current year of service of the active members.

(14-c) "Normal Cost Rate" means the salary weighted average of individual normal cost rates determined for the current active population calculated, plus an allowance for projected administrative costs. The allowance for projected administrative expenses equal the actual administrative expenses for the previous fiscal year, provided the allowance shall exceed 1 percent of pensionable payroll for the current city fiscal year unless agreed by the city.

(14-d) "Normal retirement age" means ~~the earlier of:~~

(1) for a member hired before October 9, 2004 (including a member hired prior to October 9, 2004, who voluntarily separate from service but has been retroactively reinstated pursuant to arbitration, civil service, or a court ruling after October 9, 2004), the earlier of:

(A) the age at which the member attains 20 years of service; or

(B) the age at which the member first attains both the age of at least 60 and at least 10 years of service; or

(2) for member hired or rehired on or after October 9, 2004, the age at which the member attains a combination of years of age and years of service, the sum of which equals 70.

(15) "Normal retirement date" means the date at which a member is eligible for an immediate service pension under Section 12 of this article.

(15-a) "Pay" means wages as defined by Section 3401(a) of the code, plus any amounts that are not included in gross income by reasons of Section 104(a)(1), 125, 132(f), 402(g)(2) or 457 of the code, any member contributions picked up pursuant to Section 414(h)(2) of the code, less any pay received for overtime work, exempt time pay, strategic officer staffing program pay, motorcycle allowance, clothing allowance or mentor pay. The definition of "pay" may only be amended by written agreement of the pension board and the city.

(15-b) "Payoff Year" means the year a liability layer is fully amortized pursuant to the amortization period.

(16) "Pension" means a monthly payment for life from the fund to a retired member.

Commented [WK8]: "Administrative expense" is not defined. Does it include investment expenses? HPD administrative expenses as defined by CAFR were \$3.6MM last year and HPD payroll was \$769MM, so this would allow administrative expenses to double w/o City's agreement. With agreement there is no limitation.

Commented [WK9]: For employee joining HPD at 22, this will allow retirement at 46.

Commented [WK10]: This appears to be an attempt to define base pay. Uses several undefined terms (e.g. "strategic officer staffing program pay"). CITY AND PENSION BOARDS CAN AMEND AT ANY TIME. This means at any City Council meeting they can add back, say, overtime. Who is going to monitor this from now on? [Note: "code" should be capitalized.]

(17) "Pension system" or "system" means the retirement and disability plan for employees of any police department subject to this article.

(17-a) "Pension system actuary" means an actuary from a professional service firm engaged for the pension system to prepare the RSVS for the pension system which not already engaged by the city to provide actuarial service to the city.

Commented [WK11]: No minimum qualifications for the pension's actuary like imposed on the City at 4-d

(17-b) "Pensionable payroll" means the aggregate pay of all active members.

(17-c) "Police department" means one or more law enforcement agencies designated as a police department by a city subject to this article.

(17-d) "Price inflation assumption" means the most recent headline consumer price index 10-year forecast published in the Federal Reserve Bank of Philadelphia Survey of Professional Forecasters (or other standard as determined by mutual agreement between the city and the board if such 10-year forecast becomes unavailable), as adjusted plus or minus up to 50 basis points by the board.

Commented [WK12]: What conceivable basis is there for the pension board to have the power to adjust the inflation assumption by 50bp. They will obviously always adjust it in their favor. Has anyone calculated what the effect of the board routinely adjusting this assumption.

(17-e) "Projected pensionable payroll is the sum of:

(1) the prior city fiscal's actual pensionable payroll.

(2) together with actual increases and decreases in pensionable payroll established for the current city fiscal year by city ordinance, contract or the city's budget;

(3) multiplied by the then current payroll growth rate assumption for any city fiscal year for the actual pensionable payroll is unknown.

Commented [WK13]: This term is only used one other time in the bill, in connection with voluntary City contributions. "Current payroll growth rate assumption" is used here and other places but not defined.

(17-f) "Reference point" means the Public Fund Survey's median return assumption minus 150 basis points, or other reference point mutually agreed upon by the city and the pension board if The Public Fund Survey is unusable.

Commented [WK14]: Public Fund Survey not defined. There is website, <http://publicfundsurvey.org/>. It is maintained by three other non-profits and Boston College. I could not find anything on the website that was referred to as "median return." They have a very incomplete data set (Houston police and muni were not included). Also no reference to what year(s) would be used to establish. Section 9A(c)(1)(H) provides assumed rate of return cannot be below this "reference point".

(17-g) ~~(17-a)~~ "Retired member" means a member who has separated from service and who is eligible to receive an immediate service or disability pension under this article.

(17-h) "RSVS" means a risk sharing valuation study conducted pursuant to section 9A(c) of this article.

(17-i) "Salary" means pay provided for the classified position in the police department held by the member.

(18) "School" means any public or private school through the 12th grade or any trade school, junior college, college, or university beyond the 12th grade that is accredited by a generally recognized accrediting authority.

(19) ~~Repealed by Acts 2017 "Retired member" means a member who has separated from service and who is eligible to receive an immediate service or disability pension under this article.~~

(20) "Separation from service" means cessation of work for the police department of a city subject to this article, whether caused by death, discharge, resignation, or transfer to an unclassified position.

(21) "Service" means the period of time a person is employed in the police department of a city subject to this article, except for any period of DROP participation, and includes any period that the person is receiving a disability pension under Section 15 of this article or is on a military leave of absence described by Section 23 of this article, but only if the person returns to active service after the period of disability or military leave. The term does not include periods in which a person is suspended from duty without pay, on leave of absence without pay, or separated from service.

(22) "Surviving spouse" means a person who was married to an active, inactive, or retired member at the time of the member's death and, ~~in the case of an inactive or retired member, before the member's separation from service or in the case of a marriage or remarriage after the member's retirement~~ for a period of at least five consecutive years ~~before the retired or inactive member's death.~~

(22-a) "Survivor" means a surviving spouse, a dependent child, or a dependent parent.

(23) ~~Repealed by Acts 2017 "Total direct pay" means wages as defined by Section 3401(a) of the code, plus any amounts that are not included in gross income by reason of workers' compensation claims under Section 104(a)(1), 125, 402(g)(2), or 457 of the code, member contributions picked up pursuant to Section 414(h)(2) of the code, and any portion of a motorcycle allowance that is not considered wages, less any pay received for overtime work. The term does not include nontaxable payments not expressly described by this subdivision. However, the compensation included in applying the limits under Sections 26(e) and (d) of this article shall include overtime pay and exclude any amount that is excluded from gross income under Section 104(a)(1) of the code and the portion of any motorcycle allowance that is excluded from gross income by any other provision of the code not mentioned in this subdivision.~~

(24) "Third quarter line rate" means the corridor midpoint plus one-half of the corridor margin.

(25) "UAAL" means the unfunded actuarial accrued liability, and is the difference between the actuarial accrued liability and the actuarial value of assets. "Actuarial accrued liability" is the portion of the actuarial present value of projected benefits attributed to past periods of member service based on the cost method used in the RSVS. "Actuarial value of assets" is the value of the pension plan investments other property as calculated using the asset smoothing method in the RSVS.

(26) "Ultimate Entry Age Normal" means an actuarial cost method under which a calculation is made to determine the average uniform and constant percentage rate of contribution which, if applied to the compensation of each participant during the entire period of his/her service

Commented [WK15]: I think this is trying to say that if member gets married after retirement, must be married for five years prior to death for spouse to be "surviving spouse." I guess this is an attempt to deal with the stories about members marrying friends' daughters to pass on their benefits.

Commented [WK16]: I cannot believe we are still talking about using "asset smoothing" after all the mischief that has caused in recent years. Asset valuation should be "mark to market."

anticipated covered service, would be required to meet the cost of all benefits payable on the participant's behalf based on the benefits provisions for new employees hired. The actuarial accrued for each member is the difference between the participant's present value of future benefits based on the tier of benefits that apply to the member, and the participant's present value of future normal costs determined using the normal cost rate determined above.

Commented [WK17]: Should be using Normal Age Entry.

(27) "Unanticipated change" in the UAAL is the difference between (i) the remaining balance of all then-existing liability layers as of the date of the RSVS, and (ii) the actual UAAL as of the date of the RSVS.

Commented [WK18]: This definition is not used in the bill.

(28) "Year 2017 effective date" means the effective date of the act amending this article in the 85th regular session of the Texas legislature, but no earlier than July 1, 2017.

Pension board

Sec. 3. (a) The board of trustees of the pension system that was created under Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), and that operates under Section 67, Article XVI, Texas Constitution, continues to be responsible for the general administration, management, and operation of the pension system, including the direction of investment and oversight of the fund's assets.

(b) The board is composed of seven members as follows:

(1) the administrative head of the city or the administrative head's authorized representative;

(2) three employees of the police department having membership in the pension system, elected by the active, inactive, and retired members of the pension system;

(3) two retired members who are receiving pensions from the system and are not officers or employees of the city, elected by the active, inactive, and retired members of the pension system; and

(4) the director of finance ~~treasurer~~ of the city or the person discharging the duties of the finance director, ~~city treasurer~~ or a person appointed by the director of finance.

(c) The terms of office of the board members elected as described by Subsection (b)(2) of this section shall be three years, beginning on January 1 and ending on December 31, with one board member being elected every year at an election called by the board and held in December. If a vacancy occurs among the three elected active board members, the board shall hold an election within 60 days after the date the vacancy occurred. At that election, an active member shall be elected to serve for the remainder of the term of the vacant position or for a full term if the term of the board member that caused the vacancy would have ended in that year.

(d) The terms of office of the board members elected as described by Subsection (b)(3) of this section shall be three years, beginning on January 1 and ending on December 31. Beginning in 1999, and each third succeeding year, one board member shall be elected at an election called by the board and held in December. Beginning in 2000, and each third succeeding year, a second board member shall be elected at an election called by the board and held in December. If a vacancy occurs among the two elected retired members of the board, the board shall hold an election within 60 days after the date the vacancy occurred. At that election, a retired member shall be elected to serve for the remainder of the term of the vacant position or for a full term if the term of the board member that caused the vacancy would have ended in that year. A board member who is a retired member and who was appointed to the board before January 1999 shall serve the remainder of the board member's term. On expiration of the appointed term, the appointed board member is eligible to run for the board position described by Subsection (b)(3) of this section in the same manner as any other retired member.

(e) A board member vacates the member's seat on the board if the member is removed under Section 7 of this article or ceases to meet the qualifications for the seat.

(f) An individual who is an officer or employee of any employee organization or retiree organization or an employee of the pension system is prohibited from being elected to the board, appointed to the board, or in any other way serving as a member of the board.

(g) Each board member shall, within 30 days after taking office, take an oath of office:

(1) to diligently and honestly administer the affairs of the pension system by:

(A) being loyal exclusively to all members;

(B) being prudent in protecting and managing the trust's property;

(C) defending the trust's assets; and

(D) acting under the terms of the plan; and

(2) to not knowingly violate, or willingly permit to be violated, this article.

(h) Notwithstanding any other provision in this section, if a candidate for an elected trustee position is unopposed in an election, the election may not be held for that position. The board shall certify the candidate as elected to the board on the executive director's certification that the candidate is eligible to be a trustee under this section and is unopposed for election. The certified candidate shall take the oath of office as soon as practicable in January, after being declared elected in December.

(i) Should no candidate for either an active or retired board member position receive a majority vote for that position, a run-off election for that position shall be held. The board shall establish a policy for general and run-off elections.

(j) The terms of office for board members in the phase down program A or B shall be one year. A board member who subsequently enters phase down program A or B and has served least one year of the member's current term shall vacate the member seat and may run for reelection.

Board member leave and compensation

Sec. 4. (a) The city shall allow active members who are trustees to promptly attend all pension board and committee meetings. The city shall allow trustees the time required to travel to and attend educational workshops, legislative hearings, other pension system business, and meetings regarding proposed amendments to this Act if attendance is consistent with a trustee's duty to the pension board. Elected members of the board who are employees of the city's police department are entitled to leave from their employer to attend to the official business of the pension system and are not required to report to the city or any other governmental entity regarding travel or the official business of the pension system, except when on city business.

(b) If the city employing an elected board member would withhold any portion of the salary of the member who is attending to official business of the pension system, the pension system may elect to adequately compensate the city for the loss of service of the member. If the board, by an affirmative vote of at least four board members, makes this election, the amounts shall be remitted from the fund to the city, and the city shall pay the board member's salary as if no loss of service had occurred.

(b)(e) The board, by an affirmative vote of at least four board members, may elect to reimburse board members who are not employees of the city for their time while attending to official business of the pension system. The amount of any reimbursement may not exceed \$1,000 ~~\$350~~ a month for each affected board member.

Officers; meetings; employees

Sec. 5. (a) The board annually shall elect from its active and retired membership a chairman. The board also annually shall elect from its membership a vice chairman and a secretary.

(b) The board may hire one or more employees whose positions and salaries shall be set by the board and who, acting under the direction of the board, shall keep all of the records of and perform all of the clerical services for the pension system.

(b-1) The board may hire an executive director. The executive director, acting under the direction of the board, shall handle the operations of the plan and shall perform other duties as the board may assign. The executive director shall also serve as the plan administrator for purposes of complying with Subchapter A, Chapter 804, Government Code.

Commented [WK19]: This not marked as addition but appears to be one. City has to pay for active pension board members to go to Austin to lobby.

(c) The board may employ professional investment managers and advisors to manage, or advise the board regarding the management and investment of, the fund. These professional services may include investment counseling, evaluation of fund performance, investment research, and other comparable services.

(d) The board may employ one or more actuaries, legal counsel, accountants, or other professionals and pay the compensation for these services from the fund.

(e) The board shall hold regular monthly meetings at the time and place it designates by resolution. The chairman, secretary, or any four board members may call a special meeting of the board.

(f) Each board member is entitled to one vote.

(g) Notice shall be given to all board members, unless waived in writing, of any proposed meeting, by any method reasonably calculated to provide adequate notice of the meeting. The notice may be delivered by mail, in-hand personal delivery, or facsimile or other electronically transmitted notice with recordation of receipt by the receiving board member. If all board members attend a meeting, however, failure to give notice as required by this subsection is excused.

(h) The board shall keep accurate minutes of its meetings and records of its proceedings.

(i) The trustees, executive director director, and employees of the pension system are fully protected and free of liability for any action taken or suffered by them in good faith in reliance on an actuary, accountant, treasurer, counsel, or other professional service provider, or records provided by the city, and the action is conclusively binding on all employees, members, eligible survivors, the beneficiaries and other persons, but not the city.

~~General~~ Powers and duties

Sec. 6. (a) The board shall retain control over all money collected or to be collected for the pension system, shall keep separate from all other funds all money for the use and benefit of the system, and shall keep a record of all claims, receipts, and disbursements in one or more books maintained for that purpose.

(b) The board shall establish the policies and procedures for disbursements from the fund that it considers appropriate.

(c) The board may reimburse a board member or an officer or employee of the board for liability imposed as damages because of an alleged act, error, or omission committed in the individual's capacity as a fiduciary or co-fiduciary of assets of the fund or as an officer or employee of the board and for costs and expenses incurred by a fiduciary or co-fiduciary officer or employee in defense of a claim of an alleged act, error, or omission, or may purchase from an insurer licensed

to do business in this state one or more policies of insurance that provide for the reimbursement. However, no reimbursement may be provided and no policy of insurance may be purchased under this subsection that would provide for reimbursement of a board member or an officer or employee of the board for liability imposed or expenses incurred because of the individual's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently. The cost of reimbursement or insurance coverage purchased under this subsection shall be paid from money in the fund.

(d) The board shall administer the pension system consistent with the applicable provisions of the code.

(e) The board is vested with the power to adopt for the administration of the pension system written rules and guidelines consistent with this article, including rules or guidelines to ensure that the pension system and the fund meet the qualification requirements of the code and regulations and rulings issued under the code and that are applicable to governmental plans.

(e-1) The board may sue on behalf of the pension system in any court with proper subject matter jurisdiction regardless of location. The board has sole authority to litigate matters on behalf of the pension system.

(f) (1) The board has full discretion and authority to:

(A) administer the pension system;

(B) to construe and interpret this article and any summary plan descriptions or benefits procedures;

~~(C) correct any defect, supply any omission, and reconcile any inconsistency that appears in this article; and~~

~~(D) to do all other acts necessary to carry out the purpose of this article in a manner and to the extent that the board considers expedient to administer this article for the greatest benefit of all members. All decisions of the board are final and binding on all affected parties. It is the express intent of this article that no act of the board shall fundamentally alter sections 9 or 9A of this article.~~

(2) Nothing in this article, and specifically notwithstanding anything in Section 5(i), this section 6(f), or section 6(1) of this article, including but not limited to the discretion and authority of the board to construe and interpret this article, to determine any fact, or to take any action, shall apply to the contribution provisions of section 9 or the risk sharing provisions of section 9A of this article, the interpretation of any terms used in sections 9 or 9A of this article, conducting and calculating the annual RSVS, establishing city contribution amounts, or anything else that affects the implementation and execution of sections 9 or 9A of this article. No unilateral decision or action by the board with respect to any of the foregoing is binding on the city with respect to sections 9 or 9A of this article or to their implementation except as explicitly stated in such sections.

Commented [WK20]: This is a sweeping power, limited to some degree by (D) and (2) below.

Commented [WK21]: "fundamentally" not defined.

Commented [WK22]: This is some protection of 9 and 9A from board powers granted above

(g) The board, if reasonably necessary in the course of performing a board function, may subpoena a witness or the production of a book, record, or other document. The presiding officer of the board may issue, in the name of the board, a subpoena only if a majority of the board approves. The presiding officer of the board, or the presiding officer's designee, shall administer an oath to each witness. A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the person resides or in the county in which the book, record, or other document is located. If the district court finds that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court finds are unreasonable. Failure to obey the order of the district court is punishable as contempt.

Commented [WK23]: I seriously doubt this is constitutional.
Has it ever been used?

(h) The board is not subject to Title 6, Property Code.

(i) The board has full power, through the chair, to issue process for witnesses and to administer oaths to witnesses and examine witnesses as to any matter affecting retirement, disability or death benefits under any plan with the pension system, and to compel witnesses to testify.

(j) If the board or its designee determines that any person to whom a payment is due under this article is a minor or unable to care for his affairs because of a physical or mental disability, it shall have the authority to cause the payments to be made to an ancestor, descendant, spouse, or other person the board or its designee determines to have incurred, or to be expect to incur, expenses for that person or to the institution which is maintaining or has custody of the person unless a prior claim is made by a qualified guardian or other legal representative. The board and its designee shall not be responsible to oversee the application of those payments. Payments made pursuant to this power shall be a complete discharge of the pension system's liability and obligation to such person.

(k)(1) The board shall retain an independent investment consultant or independent investment consulting firm to review at least once every three years and publish a report to the board and the city concerning information on fund investments, or demonstrate in the published annual financial report that an independent investment consultant or independent investment consulting firm has reviewed, information on fund investments, including the following:

(A) Compliance with the fund's investment policy statement (which should include review or creation of policies on matters including gifts, ethics and insider trading;

(B) Asset allocation, including a review and discussion of the various risks, objectives and expected future cash flows;

(C) Portfolio structure, including the need for liquidity, cash income, real return, inflation projection, and active/passive/index approaches for different portions of the portfolio;

(D) Investment manager performance review and evaluation of the processes used to retain and evaluate managers;

(E) Benchmarks used for each asset class and/or individual manager;

(F) Evaluation of fees and trading costs;

(G) Evaluation of any leverage, foreign exchange or other hedging; and

(H) Evaluation of investment-related disclosures in retirement system annual reports.

(2) When the Board retains it independent investment consultant or independent investment consulting firm, the pension system may require that such person agree in writing to the information that is reasonably necessary to review the abovementioned items, to the standards of review for the review and also to maintain the confidentiality of any nonpublic information for the pension system for the audit. The costs for the investment report shall be paid from the fund.

(l) Except as provided in section 6(f)(2) of this article, all decisions of the board are final and binding on all affected parties.

(m) The officers and employees of the city are fully protected and free of liability for any action taken or suffered by them in good faith in reliance on an actuary, accountant, counsel or other professional service provider.

Commented [WK24]: 6(f)(2) is the protection of 9 and 9A from unilateral board action. Does this give them power over other elements? Why does this need to be added?

Removal of board member

Sec. 7. (a) An elected board member may be removed from the board either by a vote of the membership of the pension system at a removal election initiated and held as provided by this section or by a vote of five board members together with a decision to remove the board member made by a hearing examiner as provided by this section.

(b) An appointed member of the board may be removed from the board by the administrative head of the city.

(c) To initiate an election for removal of an elected board member, a petition for removal signed by at least one-third of the members and retired members of the pension system must be filed with the board not later than the 45th day after the date the first signature on the petition is obtained. Each signature must be legible and accompanied by the signer's printed name and employee payroll number, if any. A member's payroll number may not be publicly disclosed. A removal election must be held not later than the 30th day after the date the board certifies that a petition for removal satisfies the requirements for a petition under this subsection. The results of a removal election are binding only if a majority of the active and retired members participate in the election. A board member's service on the board ends on the declaration by the board that a majority of those voting in the removal election voted in favor of removal.

(d) On the date the board makes a declaration under Subsection (c) of this section, the board shall call a special election to be held not earlier than the 20th or later than the 60th day after that date to fill the vacancy for the unexpired term of the person who was removed. The person who was removed is not eligible to run in the special election but is eligible to run in all subsequent board elections.

(e) Except as otherwise provided by Subsections (a) and (b) of this section, a board member may be removed only as provided by this subsection and Subsections (f) and (g) of this section. After an affirmative vote of the board to remove a board member under Subsection (a) of this section, the board or its designee and the board member whose removal is proposed shall attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner not later than the 10th day after the date the board votes to remove the board member, on the next workday the parties involved shall request a list of seven qualified neutral arbitrators from the American Arbitration Association of the Federal Mediation and Conciliation Service or another arbitration organization with similarly stringent standards. The board member whose removal is proposed and the board or their designees may agree on one of the seven neutral arbitrators on the list. If the parties fail to agree before the 26th day after the date the board first votes to remove the board member, each party or the party's designee shall alternate striking a name from the list, and the name remaining is the hearing examiner. The board member whose removal is proposed or the board member's designee is entitled to strike the first name. If the 25th day falls on a Saturday, Sunday, or legal holiday, the parties must strike names from the list on the next workday. The parties or their designees must agree on a date for the hearing that is within the period prescribed by Subsection (f) of this section.

(f) The hearing must begin as soon as the hearing examiner can be scheduled but not later than the 60th day after the date the board votes to remove the board member. In a hearing conducted under this subsection, the hearing examiner may issue subpoenas. The parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure, the hearing examiner must issue a decision not later than the 10th day after the date the hearing ends. Unless operating under an expedited hearing procedure, the hearing examiner shall make a reasonable effort to issue a decision not later than the 30th day after the date the hearing ends. The hearing examiner's inability to meet the time requirements imposed by this subsection does not affect the hearing examiner's jurisdiction or final decision. The final decision of the hearing examiner may be either to remove the board member or not to remove the board member from the board. The hearing examiner's fees and expenses shall be paid by the pension system. The costs of a witness shall be paid by the party who calls the witness.

(g) If the hearing examiner's decision is to remove a board member, the person removed is entitled to an opportunity to have the hearing examiner's decision reviewed. To have the decision reviewed, not later than the 30th day after the date of a decision under Subsection (f) of this section, the person removed must obtain signatures of at least one-third of the active and retired members of the pension system requesting an election to overrule the removal decision under Subsection (f). If the 30th day is a Saturday, Sunday, or legal holiday, the following workday is considered the 30th day. Each signature must indicate the signing date beside the signature, be legible, and be accompanied by the signer's printed name and employee payroll number, if any. A member's payroll number may not be publicly disclosed. The board shall verify the list not

later than the 10th day after the date the board receives it. Not later than the 30th day after the date the board has verified the signatures, the board shall hold an election among the active and retired members. If a majority of the votes cast at an election in which a majority of the active and retired members of the pension system participate favor overruling the hearing examiner's decision, the board member shall be reinstated. If a majority do not vote to overrule the decision to remove a board member, a replacement election must be held not later than the 30th day after the date of the preceding election.

(h) During the period beginning on the date of the board vote to remove a board member and ending on the date the board member is reinstated under this section, the person's privileges as a board member, including voting privileges, are suspended.

Contributions by members

Sec. 8. (a) Each active member of the pension system shall pay into the system each month ~~8 3/4~~ 10 1/2 percent of the member's ~~total direct~~ pay. The payments shall be deducted by the city from the salary of each active member each payroll period and paid to the pension system. Except for the repayment of withdrawn contributions under Section 17(f) ~~or 18(e)(3)~~ of this article and rollovers permitted by Section 17(h) of this article, a person may not be required or permitted to make any payments into the pension system after the person separates from service.

~~(b) This article does not increase or decrease the contribution obligation of any member that arose before September 1, 1999, or give rise to any claim for refund for any contributions made before that date.~~

Contributions by the City

Sec. 9. (a) Beginning with the year 2017 effective date, the city shall pay the fund its contribution for fiscal year 2018 as determined in the initial RSVS, and for each fiscal year thereafter as determined pursuant to section 9A of this article, as follows:

(1) Except by written agreement between the city and the board providing for earlier contribution, no less frequently than bi-weekly, such that each contribution to the fund shall be a contribution equal to the city contribution rate multiplied by the pensionable payroll for each bi-weekly period covered by the contribution.

(ii) For each city fiscal year, the first contribution by the city for that fiscal year shall be made no later than the first day of that fiscal year shall be made no later than the first bi-weekly pay period for active members beginning on or after the first day of that fiscal year, and the final contribution shall be made no later than the payment to active members for their bi-weekly pay period beginning during that fiscal year.

Commented [WK25]: Overtime and some other pay items are excluded from calculating employee contribution. This could be used to game the calculation in future meet & confer agreements. Would be better if based on total compensation.

Commented [WK26]: Pensionable payroll is aggregate of "pay" which excludes overtime, etc. This is less than current law which used total direct pay as one of the factors. What is the effect of excluding these items?

~~The city shall make substantially equal contributions to the fund as soon as administratively feasible after each payroll period. For each fiscal year ending after June 30, 2005, the city's minimum contribution shall be the greater of 16 percent of the members' total direct pay or the level percentage of salary payment required to amortize the unfunded actuarial liability over a constant period of 30 years computed on the basis of an acceptable actuarial reserve funding method approved by the board. However, for the fiscal year ending June 30, 2002, the city's contribution shall be \$32,645,000, for the fiscal year ending June 30, 2003, the city's contribution shall be \$34,645,000, for the fiscal year ending June 30, 2004, the city's contribution shall be \$36,645,000, and for the fiscal year ending June 30, 2005, the city's contribution shall be 16 percent of the members' total direct pay.~~

~~(b) At any time and from time to time the city may contribute additional amounts to the fund.~~
~~Repealed by Acts 2003, 78th Leg., ch. 1267, Sec. 24.~~

(c) The governing body of a city to which this article applies by ordinance or resolution may provide that the city pick up active member contributions required by Section 8 of this article so that the contributions of all active members of the pension system qualify as picked-up contributions under Section 414(h)(2) of the code. If the governing body of a city adopts an ordinance or resolution under this section, the city, the board, and any other necessary party shall implement the action as soon as practicable. Contributions picked up as provided by this subsection shall be included in the determination of an active member's total direct pay, deposited to the individual account of the active member on whose behalf they are made, and treated for all purposes, other than federal tax purposes, in the same manner and with like effect as if they had been deducted from the salary of, and made by, the active member.

~~(d) Notwithstanding any other law, the city contribution required by section 9A of this article shall not exceed an amount equal to the product of pensionable payroll multiplied by the maximum contribution rate or be less than an amount equal to the product of pensionable payroll multiplied by the minimum contribution rate.~~

Sec. 9A Risk Sharing.

~~(a) The provisions of this subsection 9A(a) of this section govern the adjustment of the city contribution rate if the city contribution rate as determined after any adjustment required by section 9A(c)(4) of this article is lower than the corridor midpoint.~~

~~(1) If the funded ratio is less than 90 percent and the city contribution rate is less than the corridor midpoint for the corresponding fiscal year, but equal to or greater than the minimum contribution rate, then the city contribution rate shall be set to equal corridor midpoint.~~

~~(2) If the funded ratio is greater than or equal to 90 percent and the city contribution rate is less than the corridor midpoint for the corresponding fiscal year, but equal to or greater than the minimum contribution rate, then the city contribution rate as calculated in the final RSVS is unchanged.~~

(3) If the city contribution rate is less than the minimum contribution rate for the corresponding year then the city contribution rate shall be set equal to the minimum contribution rate, and adjustments shall be made in the calculation of the city contribution rate as required until, except as provided in clause (E) of this subsection, the city contribution rate is the minimum contribution rate:

(A) First, adjust the actuarial value of assets equal to the current market value of assets, if doing so causes the city contribution rate to increase; and then

(B) Second, pursuant to a written agreement between the city and the pension board entered into no later than the 30th day of April preceding the first day of the city's next fiscal year, reduce the assumed rate of return to a rate not less than the reference point; and then,

(C) Third, pursuant to a written agreement between the city and the pension board entered into no later than the 30th day of April preceding the first day of the city's next fiscal year, prospectively restore all or part of benefit cuts or reduce increased employee contributions, in each case make after the year 2017 effective date; and then,

(D) Fourth, accelerate that payoff year of the liability layers, including the legacy liability, oldest layers first, to an amortization period not less than 20 years from the date the liability loss layer was first recognized in the RSVS, and then,

(E) Fifth, if the funded ratio is less than 90%, the city contribution rate shall be set to equal the corridor midpoint.

(F) Sixth, if the funded ratio is greater than or equal to 90 percent but less than 100 percent, then the city contribution rate shall be set to equal the minimum contribution rate.

(G) Seventh, if the funded ratio is greater than or equal to 100 percent, all existing liability layers, including the legacy liability, will be considered fully amortized and paid, and such fiscal year shall be the payoff year for the legacy liability, and for each subsequent city fiscal year the corridor midpoint shall be determined as provided in subsection 9A(d) of this section; and then,

(H) Eighth, if the funded ratio is greater than 100 percent, pursuant to a written agreement between the city and the pension system, reduce member contributions and/or increase pension benefits, but only if after such reduction of member contributions and increase of benefits the funded ratio is not less than 90 percent and the city contribution rate is not more than the minimum contribution rate. If no such agreement is reached on or before the 30th date of April preceding the first day of the city's next fiscal year, the board shall reduce member contributions and/or increase benefits, but only to the extent that the city contribution rate is set at or below the minimum contribution rate and the funded ratio is not less than 90 percent. If any reduction of increase has occurred within the previous three city fiscal years, then the board shall not make additional adjustments to benefits and the city contribution rate shall be set to equal the minimum contribution rate.

Commented [WK27]: This appears to give the power to the pension plan to reduce employee contributions or increase benefits to a level that would require the City to contribute the minimum contribution rate FOREVER.

(b) The provisions of this subsection 9A(b) of this section govern the adjustment of the city contribution rate if the city contribution rate determined after any adjustment required by section 9A(c)(4) of this article is greater than or equal to the corridor midpoint.

(1) If the city contribution rate is greater than or equal to the corridor midpoint for the corresponding year, but less than or equal to the maximum contribution rate, then the city contribution rate as calculated in the RSVS is unchanged.

Commented [WK28]: The initial RSVS or the annual RSVS?

(2) If the city contribution rate is greater than the maximum contribution rate for the corresponding year, then the city contribution rate shall be set to equal the corridor midpoint, and adjustments shall be made to affect the calculation of the city contribution rate as required until, except as provided in clause (C) of this subsection, the city contribution rate is the corridor midpoint:

(A) First, if the payoff year of a liability loss layer was previously accelerated under subsection 9A(a) of this section, reduce the city contribution rate to no less than the corridor midpoint by extending the payoff year of existing liability loss layers, but to a payoff year no later than 30 years from the date the liability loss layer was first recognized in an RSVS, newest layers first, and then

(B) Second, adjust the actuarial value of assets to the current market value of assets, if doing so causes the city contribution rate to decrease; and then

Commented [WK29]: The pension get to use market value when it benefits them

(C) Third, if the city contribution rate after adjustment of actuarial value and liability layers is greater than the third quarter line rate, the city contribution rate shall be set to equal third quarter line rate, and adjustments shall be made to affect the calculation of the city contribution rate as required until the city contribution rate is the third quarter line rate by, pursuant to a written agreement between the city and the board, increasing employee contributions and changing other benefits or plan changes permissible under applicable laws and regulations. If no such agreement is reached pursuant to this subsection on or before the 30th day of April preceding the first day of the city's next fiscal year, then prior to the start of the city's next fiscal year, the board shall (i) increase member contributions and decrease cost of living adjustments or (ii) increase retirement age, or any combination thereof, such that the city contribution rate is decreased to the third quarter line rate.

Commented [WK30]: How is this enforced if the board refuses do so?

(3) if the city contribution rate in the third year after adjustments were required pursuant to section 9A(b)(2)(C) of this article remains greater than the corridor midpoint, then the city contribution rate shall be set equal to the corridor midpoint, and (i) in the RSVS for such third year, adjust the actuarial value of assets to equal the current market value of assets, if doing so causes the city contribution rate to decrease, and (ii) second, pursuant to a written agreement between the city and the pension board, increase member contributions and make any other benefit or plan changes permissible under applicable laws and regulations. If no such agreement is reached pursuant to this subsection on or before the 30th day of April preceding the first day of the city's next fiscal year, then prior to the start of the city's next fiscal year, the board shall increase member contributions and decrease cost of living adjustments or (ii) increase retirement

age, or any combination thereof, such that the city contribution rate is decreased to the corridor midpoint.

Commented [WK31]: How is this enforced if the board refused to do so.

(c) The provisions of this section govern the preparation of the RSVS.

(1) An RSVS shall (i) be included in the pension system's standard valuation study which shall be conducted for the pension system annually; (ii) be performed separately as of the pension's system's fiscal year end by both the pension system actuary at the direction of the pension system and the city actuary at the direction of the city based on provided census data, financial information, and assumptions or estimates therefore in its absence and completed as provided in this section; (iii) calculate the UAAL consistent with Actuarial Standards of Practice; and (iv) be established based on the following assumptions and methods which are consistent with Actuarial Standards of Practice; (v) make adjustments to the calculation of the city contribution rate which do not require agreement between the board and the city required pursuant to section 9A(a) or (b) of this article; and (vi) be revised and restated within 30 days of any written agreement between the board and the city.

Commented [WK32]: Defined term?

Commented [WK33]: City and board can agree to change RSVS methodology

(A) Ultimate Entry Age Normal;

(B) An asset smoothing method of actuarial losses and gains of no more than five years that is selected for the pension system, except as provided in section 9A(a) or (b) of this article that treats actuarial losses and gains in the same fashion, and is consistent with Actuarial Standards of Practice.

Commented [WK34]: Assets smoothing still?

(C) Closed amortization so that the amortization period begins on the first day of the fiscal year for which the liability layer is first recognized in an RSVS for that fiscal year;

Commented [WK35]: New liability layers that are added in years after initial RSVS will amortize after 2047. Also see (E) below.

(D) Each liability layer has its own amortization period;

Commented [WK36]: Means pension debt will not be paid off in 30 years.

(E) The initial amortization for each liability loss layer shall be for a period of 30 years from the first day of the fiscal year that the liability loss layer is first recognized in an RSVS;

(F) The amortization period for each liability gain layer shall be equal to the remaining amortization period on the largest remaining liability loss layer and these two layers shall be treated as one layer such that if the payoff year of the liability loss layer is accelerated or extended, the payoff year of the liability gain layer is also accelerated or extended, or if there is no liability loss layer, the amortization period for each liability gain layer shall be for a period of 30 years from the first day of the fiscal year that the liability gain layer is first recognized in an RSVS;

(G) Liability layers, including the legacy liability, funded according to the level percent of payroll method;

Commented [WK37]: This creates negative amortization schedule

(H) The assumed rate of return as in effect from time to time, provided that the assumed rate of return may not be less than the reference point;

(I) The price inflation assumption, to be reset with each experience study conducted by the pension system, but no less than every five years;

Commented [WK38]: "Experience study" is an undefined term. Pension board is deciding inflation rate assumption. Five years is much too long.

(J) Projected salary increases and payroll growth rates set in consultation with the city's finance director; and

Commented [WK39]: This section is not clear who actually sets this critical parameter. City finance director in consultation with who? Actuaries, pension board. This rate determines the steepness of the negative amortization curve.

(K) Payroll for purposes of determining the corridor midpoint and city contribution rate shall be projected using the annual payroll growth rate assumption.

Commented [WK40]: "Annual payroll growth rate assumption" is not defined term. Presumably this refers to (J) above.

(2) By September 30 following the end of the pension system's fiscal year, the pension system shall provide to the city actuary pursuant to a confidentiality agreement the necessary census data, financial data, and assumptions used by the pension system actuary for RSVS purposes, as well as any other data used by the pension system actuary, under the confidentiality terms set forth in section 29 of this article, so that the city actuary can perform the analysis required by this section 9A.

(3) By November 30 after the end of the pension system's fiscal year, each of the pension system actuary at the direction of the pension system and the city actuary at the direction of the city will release to the other actuary, the city and the pension system for inspection and reconciliation any prepared draft RSVS. Pursuant to subsection (4) of this section, the pension system actuary and the city actuary shall have 20 business days to work together to attempt to reconcile any differences between the each RSVS. By December 31 following the end of the pension system's fiscal year, then the pension system actuary and the city actuary shall provide to the city and the fund a final RSVS adjusted to reflect any reconciled information or, if no changes were made, provide the draft RSVS marked as the final RSVS.

Commented [WK41]: How about releasing to the public?

(4) If the contribution variance is less than 2 percent of pensionable payroll in each city fiscal year, the total city contribution as determined by the pension system actuary will be used. If the contribution variance is greater than or equal to 2 percent of pensionable payroll in each city fiscal year, then city actuary and the pension system actuary shall have 20 business days after November 30 to reconcile the contribution variance. If the contribution variance is reduced to less than 2 percent of pensionable payroll in each city fiscal year, then the total city contribution as determined by the pension system actuary will be used. If after 20 business days there no reconciliation which reduces the contribution variance to an amount less than 2 percent of pensionable payroll in each city fiscal year, then the city actuary at the direction of the city and pension system actuary at the direction of the pension system shall provide their final RSVS with any changes from the initial draft, and the finance director of the city and the executive director of the pension system shall immediately execute an addendum to the RSVS, which shall be a part of the RSVS for all purposes. The addendum shall reflect the arithmetic average of the city contribution rates as the city contribution rate for each city fiscal year stated in the RSVS.

Commented [WK42]: This provides incentive for pension system to low ball number and stonewall reconciliation procedure.

(5) The initial RSVS shall be performed separately by both the pension system actuary at the direction of the pension system and the city actuary at the direction of the city on or before March 31, 2017, shall project the city contribution rate for 31 years, and shall be completed in accordance with the procedures set forth in subsection (c)(4) of this section, where applicable, for reconciling the contribution variance. The pension system shall provide to the city actuary

pursuant to a confidentiality agreement access to the necessary census data, financial data, an assumptions used by the pension system actuary for RSVS purposes, as well as any other data used by the pension system actuary, under the confidentiality terms set forth in section 29 of this this article, so that the city actuary can perform the analysis required by this section. In performing the initial RSVS, the city actuary and pension system actuary shall have adjusted the actuarial value of assets to be equal to the current market value of assets, assumed the issuance of any planned pension obligation bonds by December 31, 2017, and assuming benefit and contribution change contemplated by this article as of July 1, 2017, which shall initially establish the corridor midpoint in each city fiscal year for 31 fiscal years. If the city actuary does not conduct an initial RSVS, the results of the pension system actuary's initial RSVS shall be used unless the pension system did not provide the necessary census data, financial data, and assumptions used by the pension system actuary for RSVS purposes in a timely manner, in which case the city actuary shall have reasonable time to prepare the initial RSVS upon receipt of the necessary information. If the pension system actuary does not conduct an initial RSVS, the results of any initial RSVS prepared by the city actuary shall be used.

(d) For any city fiscal year after the payoff year of the legacy liability, or at any time the funded ratio is great than or equal to 100 percent, then the city and the pension board may agree upon a transition plan for resetting the corridor midpoint, provided that for any fiscal year for there is no agreement to reset the corridor midpoint, then the corridor midpoint shall be the value of the corridor midpoint determined in the initial RSVS for the 31st fiscal year.

(e) (i) If the city makes a voluntary contribution to the pension system greater than the amount that would be required by this section 9A, then the city shall identify the liability loss layer(s) being paid down when it makes the voluntary contribution by written notification to the pension system. In each subsequent RSVS until the end of such amortization period, a liability gain layer with the same amortization period as the selected liability loss layer is created, and the corridor midpoint shall be decreased by the amortized amount in each city fiscal year of such liability gain layer produced divided by the projected pensionable payroll.

(f) In any written agreement between the city and the board, the parties shall not fundamentally alter sections 9 or 9A of this article, increase the assumed rate of return to more than [the] reference point, extend the amortization of a liability layer to more than 30 years from first day of the city fiscal year in which the liability layer was first recognized in the RSVS for that city fiscal year, or allow a city contribution rate in any year that is less than the city contribution rate required pursuant to this section 9A of this article, or alter benefits or contributions except as provided in section 9 or 9A of this article.

(g) If for any reason the city delivers the pension obligation bonds prior to December 31, 2017, or if the city fails to pay the pension system the proceeds of the pension obligation bonds to the pension system by December 31, 2017, then the RSVS prepared for the city fiscal year 2019 contribution rate shall adjust the corridor midpoint for the period remaining until the legacy liability payoff date to account for the actual delivery date or for the undelivered bond proceeds, as applicable, and the resulting corridor midpoint for each year shall for all purposes be considered the corridor midpoint for that year established in the initial RSVS.

Commented [WK43]: Only protection from issuance of new POBs and is not adequate.

Commented [WK44]: Need to add increasing maximum contribution. This section would prohibit City from adopting DC plans.

Commented [WK45]: This deals with POBs not being issued before initial RSVS is prepared, but assumes they will be delivered at some point. What if they are not?

(h) Prior to the commencement of each city fiscal year, the finance director of the city and the executive director or the pension system shall deliver to the mayor and the board a schedule of anticipated contributions by the city to the pension system for the following city fiscal year.

Investment of surplus

Sec. 10. (a) If the board determines that a surplus of funds exists in an amount exceeding the current demands upon the pension system, the board shall invest the surplus funds in the manner provided for by Chapter 802, Government Code.

(b) The board may select an investment manager or investment advisor if the board determines the service is desirable. Selection of managers or advisors must be made from firms that have made presentations in person or in writing to the board.

(c) The board may terminate a contract with an investment advisor at any time. The board may terminate a contract with an investment manager on notice the board considers appropriate. A contract may not require the pension system to pay a penalty for early termination. The costs of investment management or advisory services shall be paid from the fund.

Service credit

Sec. 11. (a) A member who returns to service after an interruption in service is eligible or entitled to credit for the previous service to the extent provided by Section 19 of this article.

(b) Notwithstanding Subsection (a) of this section, if a member has withdrawn the contributions made during any previous period of service, the previous period of service may not be counted in determining years of service unless the contributions are repaid to the pension system in accordance with Section 17 of this article.

(c) A member may not have any service credited for unused sick leave, vacation pay, ~~or~~ accumulated overtime, or equivalent types of pay until the date the member retires, at which time the member may apply some or all of the service to satisfy the requirements for retirement, although the member otherwise could not meet the service requirement without the credit.

(d) The board shall determine the prior service to be credited to each employee of the police department who becomes an active member of the pension system. The board shall rely on the personnel records of the city or the police department in determining prior service credits.

Retirement; amount of pension; annual adjustments

Sec. 12. (a) A member who separates from service after attaining normal retirement age earning 20 or more years of service is eligible to receive a monthly service pension, beginning in the month of separation from service. ~~A member who separates from service with the city after November 23, 1998, after earning 10 or more but less than 20 years of service in any of the city's pension systems and who complies with all applicable requirements of Section 19 of this article is eligible to receive a monthly service pension, beginning in the month the individual attains 60 years of age.~~ An individual may not receive a pension under this article while still an active member, ~~except as provided by Subsection (f) of this section.~~ All service pensions end with the month in which the retired member dies. The city shall supply all personnel, financial, and payroll records necessary to establish the member's eligibility for a benefit, the member's credited service, and the amount of the benefit. The city must provide those records in the format specified by the pension system.

(b) Except as otherwise provided by this section, the monthly service pension: ~~of a member that becomes due after May 1, 2001,~~

(1) ~~For a member who is hired as an active member before October 9, 2004 (including a member before October 9, 2004, who voluntarily separated from service but has been retroactively reinstated pursuant to arbitration, civil service or a court ruling), the monthly service pension~~ is equal to 2.75 percent of the member's final average total direct pay times years of service; ~~or, if the member retired before November 24, 1998, 2.75 percent of the member's base salary,~~ for each of and in the aggregate no more than the member's first 20 years of service, plus an additional two percent of the member's final average total direct pay times years of service for each year of service or part thereof in excess of 20 years of service ~~for each of the member's subsequent years of service,~~ computed to the nearest one-twelfth of a year. A member described in this subsection who ~~separates from service after November 23, 1998, including a member who was a DROP participant, and~~ begins to receive a monthly service pension shall also receive a one-time lump-sum payment of \$5,000 at the same time the first monthly pension payment is made. The lump-sum payment under this subsection is not available to a member who has previously received a \$5,000 payment under this section or Section 16 of this article.

(2) ~~For a member hired or rehired as an active member on or after October 9, 2004, the monthly service pension is equal to 2.25 percent of the member's final average pay times years of service for the first 20 years of service, including parts of years, plus an additional two percent of the member's final average pay times years of service for all years of service in excess of 20 years of service, computed to the nearest one-twelfth of a year. Notwithstanding the foregoing, such member shall not accrue a benefit in excess of 80 percent of such member's final average pay. A member described in this subsection (b)(2) shall not receive the \$5,000 lump-sum payment described in subsection (b)(1).~~

(c) ~~In city fiscal years 2018, 2019 and 2020,~~ The pension payable to each retired member or survivor of the pension system age 70 or older shall be adjusted annually, effective April 1 of each year, upward at a rate equal to the then most recent five fiscal years smoothed return as

~~determined by the pension system actuary minus 500 basis points, with a minimum rate of zero percent and a maximum rate of four percent, notwithstanding a great or lesser return pension system's investment portfolio. two-thirds of any percentage increase in the Consumer Price Index for All Urban Consumers for the preceding year. The amount of the annual adjustment may not be less than three percent or more than eight percent of the pension being paid immediately before the adjustment, notwithstanding a greater or lesser increase in the consumer price index. Except as otherwise expressly provided in this clause, the pension payable to each other retired member or survivor shall be adjusted upward before July 1, 2020.~~

Commented [WK46]: This language needs to be cleaned up, e.g. no definition of basis points.

~~(c-1) In the city fiscal year 2021 and each fiscal year thereafter, the pension payable to (i) each retired member of the pension system is age 55 or older as of an April 1, (ii) a member or survivor who received benefits or survivor benefits before June 8, 1995 or (iii) the survivor of an active member who is killed or dies from any cause growing out of or in consequence of the performance of the member's duty shall be adjusted upward annually on April 1 of each such year at a rate equal to the then most recent five fiscal years' smoothed return as determined by the pension system actuary minus 500 basis points, with a minimum rate of zero percent and a maximum rate of four percent, notwithstanding a greater or lesser return from the pension system's investment portfolio.~~

Commented [WK47]: "investment portfolio" not defined term

(d) A retired member who receives a service pension under this article is ~~eligible entitled~~ to receive an additional amount each month equal to \$150, beginning on the later of the date the retired member's pension begins or the date the first monthly payment becomes due after June 18, 2001, and continuing until the end of the month in which the retired member dies. This amount is intended to defray the retired member's group medical insurance costs and will be paid directly by the fund to the retired member for the retired member's lifetime.

(e) At the end of each calendar year beginning after 1998, and subject to the conditions provided by this subsection, the pension system shall make a 13th benefit payment to each ~~member or survivor who is hired or rehired prior to October 9, 2004 (including for a member hired before October 9, 2004 who has been retroactively reinstated pursuant to arbitration, civil service, or a court ruling, but excluding any other such member who is reinstated after October 9, 2004) and person~~ who is receiving a service pension. The amount of the 13th payment shall be the same as the last monthly payment received by the retiree or survivor before issuance of the payment, except the payment received by any person who has been in pay status for less than 12 months shall be for a prorated amount determined by dividing the amount of the last payment received by 12 and multiplying this amount by the number of months the person has been in pay status. The 13th payment may be made only for those calendar years in which the pension system's funded ratio is 120 percent or greater.

Commented [WK48]: Eliminates 13th check (had no idea we were still doing that) unless funding ratio is 120%. Why don't we just eliminate this?

~~(1) the assets held by the fund will equal or exceed its liabilities after the 13th payment is made;~~

~~(2) the rate of return on the fund's assets exceeded 9.25 percent for the last fiscal year ending before the payment; and~~

~~(3) the payment will not cause an increase in the contribution the city would have been required to make if the 13th payment had not been made.~~

~~(f) Notwithstanding anything to the contrary in this article, an active or inactive member who is eligible to participate in the executive official pension plan established by Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, Vernon's Texas Civil Statutes), or a successor statute, may, while continuing employment with the police department, participate in the executive official pension plan and elect:~~

~~(1) if an active member:~~

~~(A) to begin receiving an immediate pension benefit and be considered a retired member eligible for all rights and privileges afforded any other retired member under this article, if the member has 20 years or more of service and is eligible for retirement under this section except for the continuing employment; or~~

~~(B) to enter DROP if the member satisfies all requirements of this article for DROP membership; or~~

~~(2) if an inactive member, to begin receiving an immediate pension benefit equal to 2.75 percent of the member's average total direct pay at the time the member became inactive for the member's first 20 years of service and be entitled to all rights and privileges afforded a retired member under this article.~~

(g) Notwithstanding anything to the contrary in this article, service pensions that began before May 1, 2001, shall continue to be paid in accordance with applicable prior law, subject only to the adjustments that are specifically provided by this section.

(h) ~~Final average~~ Average total direct pay for a member who retires after participating in a phase-down program in which the member receives a periodic payment that is generated from the member's accumulated sick time, vacation time, and overtime balances shall be based on the final average pay immediately preceding phase down participation except those members who enter DROP on or after 2017 effective date shall have their final average pay based on the final average pay immediately preceding DROP participation and not phase down participation, highest pay period, excluding any pay for overtime work, in the periods during which the member worked full-time before participating in the phase-down program.

(i) The computation of final average ~~total direct~~ pay shall be made in accordance with procedures and policies adopted by the board.

(j) Members in the phase down program, defined in the 2011 labor agreement between the city and the police officers' union, who have separated from service shall be eligible to receive monthly pension payments if they attained normal retirement age.

(k) A member may elect a partial lump sum optional payment of not more than 20 percent of the actuarial value of the member's accrued pension at retirement if the member is hire on or after October 9, 2004. The benefit shall actuarially neutral. Thus, the value of the pension the member would have received, but for the lump sum, shall be reduced actuarially to reflect the lump sum payment.

(l) Members who are receiving workers' compensation payments or have received workers' compensation and subsequently retire or enter DROP will their retirement or DROP entrance benefit calculated on the pay that the member would have received had the member not been receiving workers' compensation benefits.

Commented [WK49]: There is an equitable logic behind, what is the financial effect? How many officers are on workers comp and for how long?

(m) For members who are promoted or appointed to a position above the rank of captain on or after the 2017 effective date, their monthly service pension and contributions shall be on the pay of the position prior to being promoted or appointed, or the pay of the highest civil rank for classified police officers for those members who have no prior service with the city, which pay shall be calculated based on the three average prior to retirement.

Resumption of service as department head after retirement

Sec. 13. (a) The pension system shall suspend all pension payments to a retired member who has separated from service and is subsequently appointed as the department head of the police department. The suspension of payments begins on the effective date of the person's appointment.

(b) Pension benefits based on the person's previous period of service do not accrue during the period of pension payment suspension described by Subsection (a) of this section, but the person again becomes an active member during this period, and contributions of the city and the department head for the subsequent service are payable during the period. The department head retains credit for all previous service and acquires credit for the subsequent service unless the department head is or becomes a DROP participant.

(c) Once the department head again separates from service, pension benefits under this article shall resume based on both periods of service.

Deferred retirement option plan

Sec. 14. (a) In this section "DROP benefit" means the total amount credited to a member's notional DROP account, payable as described by this section, plus a monthly retirement pension.

(b) An active member for a member hired before October 9, 2004 (including an active member hired prior to October 9, 2004, who has been reinstated pursuant to arbitration, civil service, or a court ruling after such date, but excluding any other such member who is reinstated after October 9, 2004), who has at least 20 years of service with the police department may file with the pension system an election to must participate in DROP and receive a DROP benefit instead of the standard form of pension provided by this article as of the date the active member attained 20 years of service. Active members who meet the DROP eligibility requirements of this section on or before July 1, 2017 but are not already DROP participants must enter DROP as of the date the active member attained 20 years of service. ~~The election may be made, under procedures~~

~~established by the board, by an active member who has attained the required years of service. A DROP election that is made and accepted by the board may not be revoked before the member's separation from service.~~

~~(c) Any monthly service pension and death benefits accrued under prior law before the year 2017 effective date remain accrued; but any monthly service pension and death benefit accrued on or after the year 2017 effective date by an active member who becomes a DROP participant. The monthly service pension and death benefits of an active member who becomes a DROP participant will be determined as if the active member had separated from service and begun receiving a pension on the effective date of the DROP election. The active member does not retire but does not accrue additional service credit beginning on the effective date of the entry into DROP election, and increases in pay that occur on or after that date may not be used in computing the active member's monthly service pension, and except as provided by Subsection (4) of this section, but cost-of-living adjustments that occur on or after that date and that otherwise would be applicable to the pension will not be made while in DROP.~~

~~(d) The member's DROP benefit is determined as provided by this subsection and Subsection (e) of this section. Each month an amount equal to the monthly service pension the active member would have been eligible entitled to receive if the active member had separated from service on the effective date of entry into DROP, less any amount that is intended to help defray the active member's group medical insurance costs as described by Section 12(d) of this article, shall be credited to a notional DROP account for the active member, and each month an amount equal to the monthly contributions the active member makes to the fund on and after the effective date of entry into DROP also shall be credited to the same notional DROP account. In any year in which a 13th payment is made to retired members under Section 12(e) of this article, an amount equal to the amount of the 13th payment that would have been made to the DROP participant if the DROP participant had retired on the date of DROP entry will be credited to the DROP account.~~

~~(e) As of the end of each month an amount is credited to each active member's notional DROP account at the rate of one-twelfth of a hypothetical earnings rate on amounts in the account. The hypothetical earnings rate is determined for each calendar year based on the compounded average of the aggregate annual rate of return on investments of the pension system for the five consecutive fiscal years ending June 30 preceding the calendar year to which the earnings rate applies, multiplied by 65 percent. The hypothetical earnings rate may not be less than two and one-half percent zero.~~

Commented [WK50]: 2.5% not marked as change

~~(f) Repealed by Acts 2017. At the time of a DROP participant's separation from service, the DROP participant or, if separation from service was due to the DROP participant's death, the person entitled to receive benefits under Sections 16 and 16A of this article shall be afforded a one-time election to revoke the DROP election and substitute either the annuity that would have been paid if the member had never elected DROP or an annuity and notional DROP account equal to the annuity and notional DROP account that would have been received if the member had entered DROP on a date elected by the member or survivor. The date elected by the member or survivor may not be earlier than the earliest date the member could have elected to enter DROP or later than the date of the member's death or other separation from service. The computation of the value of the annuity and DROP account of a member or survivor who makes~~

~~a Back DROP election shall be subject to the policies and procedures adopted by the board. For purposes of this subsection, "Back DROP" means the option to make this one-time election.~~

(f-1) If a DROP participant separates from service due to death, ~~and the surviving spouse person eligible entitled to receive benefits under Sections 16 and 16A of this article may elect to receive does not revoke the DROP election,~~ the DROP benefit ~~may be received~~ in the form of an additional annuity over the life expectancy of the surviving spouse.

(g) In lieu of receiving a lump-sum DROP benefit on separation from service, a retired member who has been a DROP participant or, if separation from service was due to the DROP participant's death, the surviving spouse may leave the retired member's DROP account with the pension system, in which case interest will be credited to the DROP account in the manner described by Subsection (e) of this section.

(h) Instead of beginning to receive a service pension on separation from service in accordance with Section 12 of this article, a retired member who is a DROP participant may elect to have part or all of the amount that would otherwise be paid as a monthly service pension, less any amount required to pay the retired member's share of group medical insurance costs, credited to a DROP account, in which case the additional amounts will become eligible to be credited with hypothetical earnings in the same manner as the amounts described by Subsection (g) of this section. On and after the year 2017 effective date, no additional amounts shall be credited to the a DROP account pursuant to this Subsection (h). Notwithstanding the foregoing, any amounts credited pursuant to this Subsection (h) prior to the year 2017 effective date shall remain accrued in a retired member's DROP account.

(i) A retired member who has not attained age 70-1/2, whether or not a DROP participant before retirement, may elect to have part or all of an amount equal to the monthly service pension the retired member would otherwise be entitled to receive, less any amount required to pay the retired member's share of group medical insurance costs, credited to a DROP account, in which case the amounts will become eligible to be credited with hypothetical earnings in the same manner as the amounts described by Subsection (g) of this section. On and after the year 2017 effective date, no additional amounts shall be credited to the a DROP account pursuant to this Subsection (i). Notwithstanding the foregoing, any amounts credited pursuant to this Subsection (i) prior to the year 2017 effective date shall remain accrued in a retired member's DROP account. A retired member who has elected to have monthly service pension benefits credited to a DROP account under this subsection or Subsection (h) of this section may direct that the credits stop and the monthly service pension resume at any time. However, a retired member who stops the credits at any time after September 1, 1999, may not later resume the credits.

(j) A retired member who is a DROP participant, or a surviving spouse, may elect to receive distribution of the DROP account in a one-time lump-sum payment or in any other form of distribution that is approved by the board and satisfies the requirements of Section 401(a)(9) of the code.

(k) If a retired member who is ~~or was~~ a DROP participant is rehired as an employee of the police department, any pension or DROP distribution that was being paid shall be suspended and the

monthly amount described by Subsection (d) of this section will again begin to be credited to the DROP account while the member continues to be an employee. If the member's DROP account has been completely distributed, a new notional account will not be created and will not be credited to a DROP account on behalf of the member to receive the member's monthly credits. ~~If a retired member who was never a DROP participant is rehired as an employee of the police department, that member shall be eligible to elect participation in DROP on the same basis as any other member.~~

~~(l) The maximum number of years that active members may participate in DROP is twenty years. After the DROP participant has reached the maximum years of DROP participation, including those DROP participants with twenty or more years in DROP on or before the year 2017 effective date, the DROP participant shall no longer receive the monthly service pension that was credited to a notional DROP account but receives the hypothetical earnings rate as state in section 14(e) of this article. Notwithstanding the foregoing, a member's DROP account balance of as of immediately prior to the year 2017 effective date shall not be reduced pursuant to the foregoing provisions of this subsection (l). The DROP account of each DROP participant who was an active member on May 1, 2001, shall be recomputed and adjusted, effective on that date, to reflect the amount that would have been credited to the account if the member's pension had been computed based on 2.75 percent of the member's average total direct pay, or base pay if applicable, for each of the member's first 20 years of service. The DROP account adjustment shall also include the assumed earnings that would have been credited to the account if the 2.75 percent multiplier for the first 20 years of service had been in effect from the time the member became a DROP participant.~~

~~(m) The DROP monthly service pension, as described by Subsection (c) of this section, of each DROP participant who retires after May 1, 2001, shall be recomputed as of the date of retirement, based on the DROP participant's average total direct pay at the time of retirement and changes to the benefit formula in Section 12(b) of this article that have occurred since the member's DROP entry date. If this recomputation would result in a greater monthly service pension, as described by Subsection (c) of this section, the DROP participant's monthly service pension shall be adjusted to the greater amount.~~

Disability benefits

Sec. 15. (a) An active member who becomes totally and permanently incapacitated for the performance of the member's duties as a result of a bodily injury received in, or illness caused by, the performance of those duties shall, on presentation to the board of proof of total and permanent incapacity, be retired and shall receive an immediate duty-connected disability pension equal to: (1) for members hired or rehired prior to October 9, 2004, the greater of 55 percent of the member's final average ~~total direct~~ pay at the time of retirement or the member's accrued service pension; or (2) for members hired or rehired on or after October 9, 2004, the greater of 45 percent of the member's final average pay at the time of retirement or the member's accrued service pension. If the injury or illness involves a traumatic event that directly causes an immediate cardiovascular condition resulting in a total disability, the member is eligible for a

duty-connected disability pension. A disability pension granted by the board shall be paid to the member for the remainder of the member's life, ~~or~~ for as long as the incapacity remains, or as otherwise set forth in section 15(e) of this article. If a member is a DROP participant at the commencement of the member's disability, the member shall have the option of receiving the DROP balance in any manner that is approved by the board and that satisfies the requirements of Section 401(a)(9) of the code and Treasury Regulation Section 1.104-1(b) (26 C.F.R. Section 1.104-1) and is otherwise available to any other member under this article.

(b) A member with ~~10 years or more of credited service~~ who becomes totally and permanently incapacitated for the performance of the member's duties and is not eligible for either an immediate service pension or a duty-connected disability pension is eligible for an immediate monthly pension computed in the same manner as a service retirement pension but based on final average total direct pay and service accrued to the date of the disability. The pension under this subsection may not be less than: (1) for those members hired before October 9, 2004 (including a member hired prior to October 9, 2004 who involuntarily separated from service but has been retroactively reinstated pursuant to arbitration, civil service or a court ruling), 27.5 percent of the member's final average total direct pay; or (2) for those members hired or rehired on or after October 9, 2004, 22.5% of the member's final average pay.

(c) A member hired or rehired prior to October 9, 2004, who becomes ~~eligible entitled~~ to receive a disability pension after November 23, 1998, is ~~eligible entitled~~ to receive a one-time lump-sum payment of \$5,000 at the same time the first monthly disability pension payment is made, but only if the member has not previously received a \$5,000 payment under this section or Section 12 of this article. The retired member shall also receive an additional amount each month equal to \$150, beginning on the later of the date the pension begins or the date the first monthly payment becomes due after June 18, 2001, and continuing as long as the disability pension continues, to help defray the cost of group medical insurance. For any year in which a 13th payment is made to retired members under Section 12(e) of this article, a 13th payment, computed in the same manner, and subject to the same conditions set forth under Section 12(e) of this article, shall also be paid to members who have retired under this section.

(d) A person may not receive a disability pension unless the person files with the board an application for a disability pension not later than 180 days after the date of separation from service, at which time the board shall have the person examined by a physician(s) chosen and compensated by the board within 90 days after the member files such application. The physician shall make a report and recommendations to the board regarding the extent of any disability and whether any disability that is diagnosed is a duty-connected disability. Except as provided by Subsection (j) of this section, a person may not receive a disability pension for an injury received or illness incurred after separation from service. The board has full power, through the chairman, to issue process for witnesses and to administer oaths to witnesses and examine witnesses as to any matter affecting retirement, disability, or death benefits under any pension plan within the pension system, and to compel witnesses to testify.

(e) A retired member who has been retired for disability is subject at all times to reexamination by a physician chosen and compensated by the board and shall submit to further examination as the board may require. If a retired member refuses to submit to an examination, the board shall

~~may~~ order the payments stopped. If a retired member who has been receiving a disability pension under this section recovers so that in the opinion of the board the retired member is able to perform the usual and customary duties formerly performed for the police department, and the retired member is reinstated or offered reinstatement to the position, or hired by another law enforcement agency to the position ~~to a position reasonably comparable in rank and responsibility to the position, held at the time of separation from service~~, the board shall order the member's disability pension stopped.

Commented [WK51]: Mark up error

(f) Repealed by Acts 2003, 78th Leg., ch. 1267, Sec. 24.

(g) For purposes of this section, a member is totally and permanently incapacitated from performing duties if the member is prevented by a physical or mental injury or illness from performing duties in the police department after any reasonable accommodation offered by the police department and this condition is expected to be permanent.

~~(h) Repealed by Acts 2017. As soon as administratively feasible after the later of June 18, 2001, or the date of the member's retirement because of disability, an additional monthly disability benefit may be provided to the member. The additional monthly benefit shall be equal to the difference between the monthly benefit the member is receiving under Subsection (a) or (b) of this section, whichever is applicable, and 100 percent of the member's average total direct pay at the time of retirement because of disability. The additional benefit will end on the earlier of the fourth anniversary of the date the benefit is first paid, the end of the last month the member is engaged in an education or training program approved in accordance with procedures adopted by the board, or the date the member is approved to return to active duty. This additional monthly benefit is not reduced by any DROP account distributions the member receives unless the member elects to receive the DROP distributions in the form of an annuity. This additional benefit is not available to a member who is receiving a disability benefit under Subsection (j) of this section.~~

(i) Effective for payments that become due after April 30, 2000, and instead of the disability benefit provided by Subsection (a) or ~~(b)~~ (b) of this section, a member who suffers a catastrophic injury shall receive a monthly benefit equal to 100 percent of the member's final average ~~total direct~~ pay determined as of the date of retirement.

~~(j) Repealed by Acts 2017. A member who transfers from the police department of a city subject to this article to another department of the same city, or who separates from service and is rehired in another department, and who subsequently terminates employment with the city due to a duty-connected injury incurred while working as a non-police employee, shall be entitled to receive an immediate proportional nonduty-connected disability benefit computed in the same manner as provided by Subsection (b) of this section, but the benefit shall be based only on service earned as an employee of the police department. For purposes of this proportional disability benefit only, the 180-day application filing requirement in Subsection (d) of this section begins at the time of separation from the department that employed the member at the time the disability was incurred. A person may not receive a disability pension for an injury incurred after termination from service with the city or for a nonduty disability incurred after separation from service with the police department. This proportional nonduty-connected~~

~~disability benefit is not available to a person who is already receiving a service retirement pension or disability pension under this article.~~

(k) A benefit payment that becomes due under this section is effective on the later of the first day the disabled member leaves the payroll of the city or the date the member signs the application for a disability pension.

~~(l) A disability pension shall not be paid to a member for any disability if the disability was a result of an intentionally self-inflicted injury or a chronic illness resulting from an addiction by the member through a protracted course of non-coerced ingestion of alcohol, narcotics, prescription drugs not prescribed for the member, or other substance abuse.~~

~~(m) A disability pension shall not be paid for any disability if the disability was a result of the member's commission of a felony, except that this restriction may be waived by the board if it believes that facts exist that would mitigate the denial of the member's application for a disability pension.~~

Commented [WK52]: Board can approve disability pension even if injury was suffered during the commission of a felony??

~~(n) A member receiving a disability pension under this article or a person receiving survivor benefits as a disabled dependent child under this article shall file an annual report of employment activities and earnings with the pension system. The pension system shall establish the form of the report and time for filing the report.~~

~~(o) The result of the examination, the report by the physician, and the report of employment activities and earnings shall be considered by the board in determining whether any benefits received under this section shall be continued, decreased, or discontinued. The board may reduce or entirely discontinue all benefits to a person receiving benefits under this section who, after notice from the board, fails to file the report of employment activities and earnings.~~

~~(p) A person who fraudulently applies or receives a disability pension shall be subject to criminal and civil prosecution~~

Rights of survivors

Sec. 16. (a) For purposes of this article, a marriage is considered to exist only if couple is lawfully married under the laws of a state, the District of Columbia, a U.S. territory or a foreign jurisdiction and the marriage would be recognized as a marriage under the laws of at least one state, possession or territory of the United States, regardless of domicile ~~the marriage is recorded in the records of the recorder's office in the county in which the marriage ceremony was performed.~~ In the case of a common-law marriage, a marriage declaration must be signed by the member and the member's common-law spouse before a notary public or similar official and recorded in the records of the applicable jurisdiction county clerk's office in the county in which the couple resides at the commencement of the marriage. In addition, a marriage that is

evidenced by a declaration of common-law marriage signed before a notary public or similar official after December 31, 1999, may not be treated as effective earlier than the date on which it was signed before the notary public of similar official.

(b) If a retired member dies after becoming eligible for entitled to a service or disability pension, the board shall pay an immediate monthly benefit as follows:

(1) to the surviving spouse for life, if there is a surviving spouse, a sum equal to the pension that was being received by the retired member at the time of death;

(2) to the guardian of any dependent child under the age of 18 or disabled children, on behalf of such the dependent child children, or directly to any other dependent child, for as long as the dependent child meets the requirements of section 2(7) of thi if there is no spouse eligible for entitled to an allowance, the sum a surviving spouse would have received, to be divided equally among the dependent children if there is more than one dependent child; or

(3) to any dependent parents for life if no spouse or dependent child is eligible entitled to an allowance, the sum the spouse would have received, to be divided equally between the two parents if there are two dependent parents.

(c) If an active a member of the pension system who has not completed 10 years of service in the police department is killed or dies from any cause growing out of or in consequence of any act clearly not in the actual performance of the member's official duty, the member's surviving spouse, dependent child or children, or dependent parent or parents are eligible entitled to receive an immediate benefit. The benefit is computed in the same manner as a service retirement pension but is based on the deceased member's service and final average total direct pay at the time of death. The monthly benefit may not be less than:

(1) for those members hired before October 9, 2004 (including a member hired prior to October 9, 2004 who involuntarily separated from service but has been retroactively reinstated pursuant to arbitration, civil service or a court ruling), 27.5 percent of the member's final average total direct pay.

(d) Repealed by Acts 2003, 78th Leg., ch. 1267, Sec. 24.

(e) If any active member is killed or dies from any cause growing out of or in consequence of the performance of the member's duty, the member's surviving spouse, dependent child or children, or dependent parent or parents are eligible entitled to receive immediate benefits computed in accordance with Subsection (b) of this section, except that the benefit payable to the spouse, or to the guardian of the dependent child or children if there is no surviving spouse, or the dependent parent or parents if there is no surviving spouse or dependent child, is equal to 100 percent of the member's final average total direct pay, computed as of the date of death.

(f) A surviving spouse who receives a survivor's benefit under this article is eligible entitled to receive an additional amount each month equal to \$150, beginning with the later of the date the first payment of the survivor's benefit is due or the date the first monthly payment becomes due

after June 18, 2001, and continuing until the end of the month in which the surviving spouse dies.

(g) A surviving spouse or dependent who becomes eligible to receive benefits with respect to an active member hired for rehired prior to October 9, 2004 who dies in active service after November 23, 1998, is ~~eligible entitled~~ to receive a one-time lump-sum payment of \$5,000 at the time the first monthly pension benefit is paid, if the member has not already received a \$5,000 lump-sum payment under Section 12 or 15(c) of this article. If more than one dependent is eligible to receive a payment under this subsection, the \$5,000 shall be divided equally among the eligible dependents. This payment has no effect on the amount of the surviving spouse's or dependents' monthly pension and may not be paid more than once.

(h) The monthly benefits of surviving spouses or dependents provided under this section, except the \$150 monthly payments described by Subsection (f) of this section, shall be increased annually at the same time and by the same percentage as the pensions of retired members, subject to the age the retired member would have been as of the age of the increase, are increased in accordance with ~~section~~ Section 12(c) or 12(c) of this article. Also, for any year in which a 13th payment is made pursuant to Section 12(e) of this article, a 13th payment, computed in the same manner, shall also be made to ~~survivor survivors~~ who ~~is are eligible entitled~~ to receive death benefits at that time if the member would have been entitled to a 13th payment, if living.

(i) If a member or individual receiving a survivor's pension dies before monthly payments have been made for at least five years, leaving no person otherwise ~~eligible entitled~~ to receive further monthly payments with respect to the member, the monthly payments shall continue to be made ~~to the designated beneficiary of the member or survivor, or to the estate of the member or survivor if a beneficiary was not designated,~~ in the same amount as the last monthly payment made to the member ~~or, survivor, or estate,~~ until payments have been made for five years with respect to the member, as follows: (1) to the spouse of the member, if living; (2) if no spouse is living, to the natural or adopted children of the member to be divided equally among the children if the member has more than one child. If no spouse or children are living, then no such benefit will be paid. If the member dies after becoming ~~eligible to receive benefits vested~~ but before payments begin, leaving no survivors eligible for benefits, the amount of each monthly payment over the five-year period shall be the same as the monthly payment the member would have received if the member had taken disability retirement on the date of death and to the member's spouse or children in the manner set forth above. If no spouse or children are living, then no such benefit will be paid. A member may designate a beneficiary in lieu of the member's estate to receive the remaining payments in the event the member and all survivors die before payments have been received for five years. The member's estate or a beneficiary who is not a survivor or dependent is not entitled to receive the payment described by Subsection (g) of this section.

Beneficiary Designation for DROP

Sec. 16A. (a) Except for the marriage requirements, the ~~The~~ provisions of Section 16 of this article pertaining to rights of survivors do not apply to an amount held in a member's DROP

account. A member who participates in DROP may designate a beneficiary in the form and manner determined by or no behalf of the board to receive the balance of the member's DROP account in the event of the member's death, as permitted by Section 401(a)(9) of the code and the board's policies. A member who is married is considered to have designated the member's spouse as the member's beneficiary unless the spouse consents, in a notarized writing delivered to the board, to the designation of another person as beneficiary. If no designated beneficiary survives the member, the board ~~shall~~ ~~may~~ pay the balance of the member's DROP account to the member's beneficiaries in the following order:

(1) to the member's spouse;

(2) if the member does not have a spouse, to each natural or adopted child of the member or to the guardian of the child if the child is a minor or disabled in equal shares;

(3) if the member does not have a spouse or any children, to each surviving parent of the member in equal shares; or

(4) if the member has no beneficiaries described by Subdivisions (1), (2), and (3) of this subsection, to the estate of the member.

(b) If a member names a spouse as a beneficiary and is subsequently divorced from that spouse, the divorce voids the designation of the divorced spouse as the member's beneficiary. A designation of a divorced spouse will cause the board to pay any balance remaining in the member's DROP account in the order prescribed by Subsection (a) of this section.

(c) The surviving spouse may designate a beneficiary on a form developed by the pension system to receive the DROP account due but not received prior to the surviving spouse's death.

(d) Payment of the member's DROP account balance made in accordance with this section on behalf of a minor or other person under a legal disability fully discharges the pension system's obligation to that person.

Termination of employment; refunds; reemployment

Sec. 17. (a) When any active member of the pension system separates from service, either voluntarily or involuntarily, before becoming eligible for an immediate service retirement or disability pension, the member ceases to be an active member of the pension system.

(b) A member of the pension system who has not completed 20 years of service at the time of separation from service with the police department is ~~eligible for~~ ~~entitled to~~ a refund of the total of the contributions the member made to the pension system, plus any amount that was contributed for the member by the city and not applied in accordance with this section to provide the member with 10 years of service. The refund does not include interest, and neither the city nor the member is ~~eligible for~~ ~~entitled to~~ a refund of the contributions the city made on the

member's behalf, except as expressly provided by this subsection. By receiving the refund, the member forfeits any service earned before separation from service, even if it is otherwise nonforfeitable.

(c) The board shall notify each member of the pension system of the right to a refund as authorized by this section.

(d) A member must apply to the board for a refund within one year after the date of separation from service. Failure to apply for the refund within the one-year period results in a forfeiture of the right to the refund except for an inactive member ~~who is eligible for a pension whose right to a pension is nonforfeitable~~. However, the board may reinstate any amount forfeited and allow the refund on application by the former member.

(e) Heirs, executors, administrators, personal representatives, or assignees are not ~~eligible entitled~~ to apply for and receive the refund authorized by this section ~~except as provided by Section 16(e) of this article~~.

(f) If a person who separates from service and receives a refund is subsequently reemployed as an employee of the police department, the person shall be reinstated as an active member of the pension system. Prior service of the active member with the police department may not be counted toward a retirement pension unless the member pays to the pension system, not later than the 90th day after the date of a subsequent separation from service, an amount equal to any contributions previously refunded to the member under this section. Except as provided by Section 18 of this article, a person is not eligible to repay any withdrawn contributions unless the person is reemployed by the police department of the city for which the prior service was performed.

(g) A member who is contesting an indefinite suspension action may, on application to the board, receive a return of the member's contributions and be separated from service on receipt of the contributions; otherwise, a suspended member is considered to have a separation from service when a final decision of the arbitrator adverse to the member is rendered.

(h) Subject to procedures adopted by the board, the pension system shall accept a direct cash transfer of funds from another plan that is an eligible rollover distribution within the meaning of Section 402(f)(2)(A) of the code. The transfer shall be accepted only for the purpose of repaying contributions the member has previously withdrawn or for other purposes expressly authorized by the board's procedures.

~~(i) Either former members reemployed after October 8, 2004, or current members who leave after October 9, 2004, when reemployed may buy back prior service credit at two and one-quarter percent per year under the rules that apply to active members hired after October 9, 2004. Active members hired before October 9, 2004 and who not yet bought back prior service credit or those members hired before October 9, 2004, and involuntarily separated may buyback prior service credit at two and three-quarters percent.~~

Employment by another department

Commented [WK53]: Undefined terms (e.g. buy-back); percent of what; do we have any idea what the cost of this is; why would the City do this?

Sec. 18. (a) Except as provided by this section:

(1) credit may not be allowed to any person for service with any department in the city other than the police department; and

(2) a person's service will be computed from the date of entry into the service of the police department until the date of separation from service with the police department.

~~(3) an active member who received service credit for service with any department in the city other than the police department before the year 2017 effective shall no longer have those service credits apply. Should the active member also have a DROP account, the DROP account shall be adjusted or closed completely based on the service credit that no longer applies.~~

Commented [WK54]: Undefined terms, e.g. "service credit"

(b) Solely for purposes of determining whether a person has a sufficient number of years of service to receive a retirement pension or to enter the DROP program, and not for purposes of determining the amount of the pension or DROP credit, a person who is employed in any full-time position with the city after June 18, 2001, and has or obtains any credited service with the pension system after that date, shall receive service credit for any period of full-time employment with the same city. However, a person may not receive credit for service with both the police department and any other department of the city for the same period.

~~(c) Notwithstanding Section 17 of this article and Subsection (b) of this section, a former member of the pension system shall be permitted to repay withdrawn contributions and restore service credit previously earned with the pension system, even if the former member is not reemployed by the police department, if the former member:~~

~~(1) is employed by the same city in which the service credit for employment with the police department was earned;~~

~~(2) is a participant in another pension plan maintained by the city; and~~

~~(3) repays to the pension system the withdrawn contributions not later than the 90th day after the date of separation from active employment with the city.~~

(d) Classified police officers who were formerly employed by a city as park police, airport police, or marshals, who were involuntarily transferred from another city department to the police department of the city, and who are current active members of the pension system shall have the option to receive credit with the pension system for previous service with another pension system of the city, provided that a person may not receive service credit for both pension systems for the same period of service.

Persons rejoining or transferred by city; service credit; double benefits; return to service

Sec. 19. (a) An employee of the city who has retired under this article or under former law governing the pension system and is or has been transferred by action of the city to a classified position in a police department included in the pension system again becomes an active member of the pension system as of the effective date of the transfer.

(b) A person who rejoins the pension system under this section is ~~eligible entitled~~ to receive service credit for each day of service and work performed by the person in a classified position in the police department, except for any period during which the person is a DROP participant. The board shall add service earned after the transfer to the prior service the active member accrued in a classified position in the police department. However, the active member may not receive service credit under this article, except to the extent provided by Section 18, for service performed for the city other than in a classified position in the police department.

(c) After a transfer described by this section, contributions of the city and the active member become payable as for other active members of the pension system.

(d) When a member who has transferred as described by this section subsequently retires, the retired member is ~~eligible for entitled to~~ a pension computed on the basis of the combined service described by Subsection (b) of this section, after deducting any period in which the member was suspended from duty without pay, on leave of absence without pay, separated from service, or employed by the city in a capacity other than in a classified position in the police department.

(e) If a retired member receives both pension benefits from the pension system and a salary from a classified position in the police department that cover the same period, the retired member shall repay to the pension system the pension benefits received during that period. The board shall withhold payment of pension benefits under this article if it is determined that a retired member is receiving both pension benefits from the fund and a salary from the police department that cover the same period. On request of the board, the city attorney or a private attorney chosen by the board shall file suit in a court of competent jurisdiction to recover pension benefits owed to the pension system under this subsection.

(f) This article does not authorize the return to service with a police department or the resumption of active membership in the pension system by a retired member except as specifically provided by Section 13 or 14 of this article or this section.

Donations

Sec. 20. The pension system may accept gifts and donations, and the gifts and donations shall be added to the fund for the use of the pension system, including, but not limited to, for use for education programs and the related administrative expenses of the programs.

Determination of benefits; provision of information

Sec. 21. (a) The board may require any member, survivor, or other person or entity to furnish information the board requires for the determination of benefits under this article. If a person or entity does not cooperate in the furnishing or obtaining of information required as provided by this section, the board may withhold payment of the pension or other benefits dependent on the information.

(b) The city, within 14 days of a request by or on behalf of the board, will, unless otherwise prohibited by law, supply to the pension system personnel, payroll, and financial records in its possession necessary for the pension system to provide pension administrative and fiduciary services hereunder to establish beneficiaries' eligibility for any benefit, members' credited service, the amount of any benefits (including but not limited to disability benefits), and such other information needed, if any, to calculate any amount required to be determined pursuant to Governmental Accounting Standards Boards Statements 67 and 68, or any successor, as amended, including by not limited to

(1) Service verification

(A) Sworn date

(B) Suspension dates

(C) Absent without pay days (including maternity leave)

(D) Date of termination

(E) Re-employment date

(2) Medical records

(3) Workers' compensation records and pay information

(4) Payroll information

(5) Members on military leave

(6) Phas down participants (entry date, phase down plan)

(c) In addition, the city will provide any information that may be reasonably necessary to enable the pension system to comply with administrative services the pension system performs for the city as reasonably necessary to obtain any ruling or determination letter from the Internal Revenue Service.

(d) The information provided by the city shall be transmitted to the pension system electronically in a format specified for the pension system, to the extent available to the city, or in writing if so request on behalf of the pension system.

(e) As a service to the city, the pension system will determine each member's credited service and pension benefits on the basis of the personnel and financial records of the city and the records of the pension system.

Legal Advice

Sec. 22. The city attorney of the city shall handle all legal matters for the pension system that are referred by the board without additional compensation for the service. The board may, however, as it considers necessary, employ outside legal counsel to the exclusion of, or to assist, the city attorney and pay reasonable compensation for the service of the additional legal counsel from the fund.

Members in Military Service

Sec. 23. (a) A member of the pension system engaged in active service in a uniformed service may not be required to make the monthly payments into the fund and may not lose any previous years' service with the city because of the uniformed service. The uniformed service shall count as continuous service in the police department if the member returns to the city police department after discharge from the uniformed service as an employee within the period required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended, and the uniformed service does not exceed the period for which a person is ~~eligible entitled~~ to have service counted pursuant to that Act. Notwithstanding any other provision of this article, contributions and benefits shall be paid and qualified service for military service shall be determined in compliance with Section 414(u) of the code.

(b) The city is required to make its payments into the fund on behalf of each member while the member is engaged in a uniformed service. If a member who has less than 10 years of service in the pension system dies directly or indirectly as a result of the uniformed service, and without returning to active service, the spouse, dependent children, dependent parent, or estate of the member is ~~eligible entitled~~ to receive a benefit in the same manner as described by Section 16(c) of this article.

Actions for funds misapplied

Sec. 24. (a) The board may recover by civil action from any offending party or from the party's bondsman, if any, any money paid out or obtained from the fund through fraud, misrepresentation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board for the use and benefit of the fund.

(b) Payments due on behalf of a dependent child shall be paid to the dependent child's guardian, if any, or if none to the person with whom the dependent child is living, except that the board may make payments directly to a dependent child in an appropriate case and withhold payments otherwise due on behalf of any person if the board has reason to believe the payments are not being applied on behalf of the person ~~eligible entitled~~ to receive them. The board may request a court of competent jurisdiction to appoint a person to receive and administer the payments due to any dependent child or person under a disability.

Federal tax qualification of fund

Sec. 25. (a) The fund described by this article is intended to qualify under Section 401(a) of the code and is for the exclusive benefit of the members and their survivors. No part of the corpus or income of the fund may ever be used for, or diverted to, any purpose other than the benefit of members and their survivors as provided by this article.

(b) A member or survivor of a member of the pension system may not accrue a retirement pension, disability retirement allowance, death benefit allowance, DROP benefit, or any other benefit under this article in excess of the benefit limits applicable to the fund under Section 415 of the code. The board shall reduce the amount of any benefit that exceeds those limits by the amount of the excess. If total benefits under this fund and the benefits and contributions to which any member is entitled under any other qualified plans maintained by the city that employs the member would otherwise exceed the applicable limits under Section 415 of the code, the benefits the member would otherwise receive from the fund shall be reduced to the extent necessary to enable the benefits to comply with Section 415.

(c) Any ~~distribute member or survivor~~ who receives ~~any distribution that is~~ an eligible rollover distribution ~~as defined by Section 402(c)(4) of the code~~ is ~~eligible entitled~~ to have that distribution transferred directly to another eligible retirement plan of the ~~distributee's member's or survivor's~~ choice on providing direction to the pension system regarding that transfer in accordance with procedures established by the board.

(1) "Eligible rollover distribution" means any distribution of all of any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life of live expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under section 401(a) (9) of the code; or

(C) any distribution that is made upon hardship of the employee.

(2) "Eligible retirement plan" means an individual retirement account described in section 408(a) of the code, an individual retirement annuity described in section 408(b) of the code, an annuity plan described in section 403(a) of the code, an eligible deferred compensation plan as defined in section 457(b) of the code that is maintained by an eligible employer described in section 457 (e) (1) (A) of the code, an annuity contract described in section 403(b) of the code, or a qualified trust described in section 401(a) of the code, that accepts the distributee's eligible rollover distribution. In the case of an eligible rollover distribution for a designated beneficiary that is not the surviving spouse or a spouse or a former spouse who is an alternate payee under a qualified domestic relations order, an eligible retirement plan means only an individual retirement account or individual retirement annuity that is established for the purpose of receiving the distribution on behalf of such beneficiary.

(3) "Distributee" means a member or a member's surviving spouse or non-spouse designated beneficiary. In addition, a member's spouse or former spouse who is the alternate payee under a qualified domestic relations order is a distributee with regard to the interest of the spouse.

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

(d) The annual compensation for each member total salary taken into account for any purpose under this article for any member of the pension system may not exceed \$200,000 for any year for an eligible participant, or for years beginning after 2001 for an ineligible participant, or \$150,000 a year before 2001 for an ineligible participant. These dollar limits shall be adjusted from time to time in accordance with guidelines provided by the United States ~~S~~ecretary of the ~~T~~reasury and shall otherwise comply with section 401(a)(17) of the code in all respects. For purposes of this subsection, an eligible participant is a person who first became an active member before 1996, and an ineligible participant is a member who is not an eligible participant.

(e) Accrued benefits under this article become 100 percent nonforfeitable for a member on the date the member has completed 10 years of service. If the pension system or the fund is terminated or partially terminated, or city contributions to the fund are discontinued completely, there may not be a reversion of funds to the employer. On complete or partial termination or discontinuance of city contributions, the fund held by the pension system shall be used exclusively for benefits for members and their surviving spouses and dependents, and the members' rights to the benefits, to the extent funded, shall be nonforfeitable if not already nonforfeitable under this subsection.

(f) Amounts representing forfeited nonvested benefits of terminated members may not be used to increase benefits payable from the fund.

(g) Distribution of benefits must begin not later than April 1 of the year following the calendar year during which the member ~~eligible for~~ ~~entitled to~~ the benefits becomes 70½ years of age or terminates employment with the employer, whichever is later, and must otherwise conform to Section 401(a)(9) of the code.

(h) For purposes of adjusting any benefit due to the limitations prescribed by Section 415 of the Code, the following provisions shall apply:

(1) Participation in Other Qualified Plans: Aggregation of Limits.

(A) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in section 414(j) of the Internal Revenue Code maintained by the city shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(B) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in section 414(i) of the Internal Revenue Code maintained by the city shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(2) Basic 415(b) Limitation.

(A) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415 (b) (1) (A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the pension system. In no event, shall a member's annual benefit payable under the retirement system, including any DROP and/or PROP benefits, in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code and the regulations thereunder.

(B) For purposes of section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to any after-tax employee contributions (unless pursuant to section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in section 415 (b) (2) (A) of the Internal Revenue Code) . The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(3) Adjustments to Basic 415(b) Limitation for Form of Benefit.

(A) If the benefit under the pension system is other than the form specified in subsection (2) (A), including DROP and/or PROP benefits, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(B) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the limit under Section 415(b) of the Internal Revenue Code applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined by using the assumptions specified in Treasury Regulation section 1.415(b)-1(c) (2) (ii) that takes into account the additional benefits under the form of benefit as follows:

(C) For a benefit paid in a form to which Section 417 (e) (3) of the Internal Revenue Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

(i) The annual amount of the straight life annuity (if any) payable to the member under the pension system commencing at the same annuity starting date as the form of benefit to the member, or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d) (2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417 (e) (3) (B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e) (3) (B) of the Internal Revenue Code); or

(D) For a benefit paid in a form to which section 417(e) (3) of the Internal Revenue Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation section 1.417(e)-1(d) (2) (the

mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e) (3) (B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e) (3) (B) of the Internal Revenue Code); or

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d) (3) (prior to January 1, 20 , using the rate in effect for the month prior to retirement, and on and after January 1, 20 using the rate in effect for the first day of the plan year with a one-year stabilization period [Need to check with actuary on look back and stability period used.]) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation section 1.417(e)-1(d) (2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417 (e) (3) (B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e) (3) (B) of the Internal Revenue Code), divided by 1.05.

(E) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above subsections (2) and (3).

(4) Benefits For Which No Adjustment of the 415(b) Limit is Required. For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:

(A) Any ancillary benefit which is not directly related to retirement income benefits;

(B) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(C) Any other benefit not required under section 415(b) (2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of section 415(b) (1) of the Internal Revenue Code.

(5) Other Adjustments in 415(b) Limitation.

(A) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age 62.

(B) In the event the member's benefit is based on at least 15 years of service as a full-time employee of any police or fire department or on 15 years of military service, in accordance with

Section 415(b) (2) (G) and (H) of the Internal Revenue Code, the adjustments provided for in clause (A) of this subsection shall not apply.

(C) In accordance with Section 415(b) (2) (I) of the Internal Revenue Code, the reductions provided for in clause (A) of this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits .

(D) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:

(i) Retirement System Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65, and the Retirement System does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation, with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in IRC Section 417 (e) (3) (B) (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii) Retirement System Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65, and the Retirement System has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the lesser of the limitation determined under paragraph (A) above and the defined benefit dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Retirement System at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Retirement System at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under the Retirement System at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Retirement System at age 65 is the annual amount of such annuity that would be payable under the Retirement System to a hypothetical member who is age 65 and has the same accrued benefit as the member.

(iii) Notwithstanding the other requirements of this section, no adjustment shall be made to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the Retirement System does

not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Internal Revenue Code, upon the member's death.

(6) Less than Ten Years of Participation or Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation shall be the amount determined under subsection (b), as adjusted under subsection (c) and/or (e), multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten (10). The limit under subsection (g) (concerning the \$10,000 limit) shall be similarly reduced for any member who has accrued less than ten (10) years of service, except the fraction shall be determined with respect to years of service instead of years of participation. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or preretirement death benefits.

(7) \$10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this retirement system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the city has not at any time maintained a qualified defined contribution plan in which the member participated.

(8) Effect of COLA on Benefits Not Paid in the Form of a Lump Sum. Effective on and after January 1, [1995], for purposes of applying the limits under section 415(b) of the Internal Revenue Code (the "Limit") to a member's benefit paid in a form to which 417(e) (3) does not apply, the following shall apply:

(A) a member's applicable Limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under Section 12 of this article;

(B) to the extent that the member's annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(C) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Section 12 of this article, shall be tested under the then applicable benefit Limit including any adjustment to the section 415(b) (1) (A) of the Internal Revenue Code dollar limit under section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(9) Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of section 415 of the Internal Revenue Code, in accordance with

applicable Treasury Regulations.

10) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the retirement system and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the retirement system and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement for the retirement system and the plan administrator of all other plans covering such member.

~~(h) If the amount of any benefit is to be determined on the basis of actuarial assumptions that are not otherwise specifically set forth for that purpose in this article, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the pension system's actuary and approved by the board. The actuarial assumptions being used at any particular time shall be attached as an addendum to a copy of this article and treated for all purposes as a part of this article. The actuarial assumptions may be changed by the pension system's actuary at any time if approved by the board, but a change in actuarial assumptions may not result in any decrease in benefits accrued as of the effective date of the change.~~

(i) To the extent permitted by law, the board may adjust the benefits of retired members and survivors by increasing any benefit that was reduced because of Section 415 of the code. If Section 415 of the code is amended to permit the payment of amounts previously precluded under that section, the board may adjust the benefits of retired members or their surviving spouses or dependents, including the restoration of benefits previously denied. Benefits paid under this subsection are not considered as extra base salary earned after retirement but as the delayed payment of benefits earned before retirement.

(j) The board may make any change in this article to the extent that the change is necessary to assure compliance with the qualification requirements of Section 401 of the code or any other federal law.

Excess benefit plan

Sec. 26. (a) A separate, nonqualified, unfunded excess benefit plan is created outside the fund.

(b) In this section:

(1) "Excess benefit plan" or "plan" means the separate, nonqualified, unfunded excess benefit plan created by this section for the benefit of eligible members, as amended or restated from time to time, that is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Section 415(m) of the code.

(2) "Qualified plan" means the pension system and any other plan maintained by the city for the exclusive benefit of some or all of the members of the pension system that has been found by the Internal Revenue Service to be qualified or has been treated by the city as a qualified plan under Section 401 of the code.

(3) "Maximum benefit" means the retirement benefit a retired member and the spouse, dependent child, or dependent parent of a retired member or deceased member or retiree are ~~eligible entitled~~ to receive from all qualified plans in any month after giving effect to Section 25(b) of this article and any similar provisions of any other qualified plans designed to conform to Section 415 of the code.

(4) "Excess benefit participant" means any retired member whose retirement benefits as determined on the basis of all qualified plans without regard to the limitations of Section 25(b) of this article and comparable provisions of other qualified plans would exceed the maximum benefit permitted under Section 415 of the code.

(5) "Unrestricted benefit" means the monthly retirement benefit a retired member and the spouse, dependent child, or dependent parent of a retired member or deceased member would have received under the terms of all qualified plans except for the restrictions of Section 25(b) of this article and any similar provisions of any other qualified plans designed to conform to Section 415 of the code.

(c) An excess benefit participant who is receiving benefits from the pension system is ~~eligible for entitled to~~ a monthly benefit under this excess benefit plan in an amount equal to the lesser of:

(1) the member's unrestricted benefit less the maximum benefit; or

(2) the amount by which the member's monthly benefit from the fund has been reduced because of the limitations of Section 415 of the code.

(d) If a spouse, dependent child, or dependent parent is ~~eligible for entitled to~~ preretirement or postretirement death benefits under a qualified plan after the death of an excess benefit participant, the surviving spouse, dependent child, or dependent parent is entitled to a monthly benefit under the excess benefit plan equal to the benefit determined in accordance with this article without regard to the limitations under Section 25(b) of this article or Section 415 of the code, less the maximum benefit.

(e) Any benefit to which a person is ~~eligible entitled~~ under this section shall be paid at the same time and in the same manner as the benefit would have been paid from the pension system if payment of the benefit from the pension system had not been precluded by Section 25(b) of this

article. An excess benefit participant or any beneficiary may not, under any circumstances, elect to defer the receipt of all or any part of a payment due under this section.

(f) The board shall administer the plan, and the board's designee shall also carry out the business of the board with respect to the plan. Except as otherwise provided by this section, the rights, duties, and responsibilities of the board and the board's designee are the same for the plan as for the funds of the pension system.

(g) The consultants, independent auditors, attorneys, and actuaries selected to perform services for the fund also shall perform services for the plan, but the fees for their services may not be paid by the fund. The actuary engaged to perform services for the fund shall advise the board of the amount of benefits that may not be provided from the fund solely by reason of the limitations of Section 415 of the code and the amount of employer contributions that will be made to the plan rather than to the fund.

(h) Contributions may not be accumulated under the plan to pay future retirement benefits. Instead, each payment of city contributions that would otherwise be made to the fund under Section 9 of this article shall be reduced by the amount determined by the board or its designee as necessary to meet the requirements for retirement benefits under the plan, including reasonable administrative expenses, until the next payment of city contributions is expected to be made to the pension system. The city shall then pay to the plan, from the withheld contributions, not earlier than the 30th day before the date each distribution of monthly retirement benefits is required to be made from the plan, the amount necessary to satisfy the obligation to pay monthly retirement benefits from the plan. The board or its designee shall satisfy the obligation of the plan to pay retirement benefits from the employer contributions so transferred for that month.

(i) Employer contributions otherwise required to be made to the pension system under Section 9 of this article and any other qualified plan shall be divided into those contributions required to pay retirement benefits under this section and those contributions paid into and accumulated to pay the maximum benefits permitted under the qualified plan. Employer contributions made to provide retirement benefits under this section may not be commingled with the money of the fund forming part of the pension system or any other qualified plan.

Agreement to change benefits

Sec. 27. (a) Notwithstanding any law to the contrary, the board or a designee of the board is responsible for representing the interests of the pension system and all pension issues and benefits affecting the pension system or its members and beneficiaries under this article. The board may enter into a written agreement with the city on behalf of the pension system and members and beneficiaries of the pension system if the agreement is approved by the board and signed by the mayor and the board or the board's designee.

(b) A pension benefit or allowance provided by this article may be increased if the increase:

Commented [WK55]: This appears to be a sweeping power to change anything in the statute by agreement. "signed by mayor" – council approval?

(1) is first approved by a qualified actuary selected by the board;

(2) is approved by the board and the city in a written agreement as authorized by this section, ~~and~~

(3) does not deprive a member, without the member's written consent, of a right to receive benefits ~~when that have become fully vested and matured in~~ the member is fully eligible.

Commented [WK56]: Allows City and board to INCREASE benefits

Nonreduction, nonalienation, and nonassignment of benefits

Sec. 28. (a) No portion of the funds held by the pension system, either before or after an order for its disbursement by the board, and no amounts due or to become due to any member or survivor under this article may be held, seized, taken, subject to, detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process may issue out of or by any court of this state for the payment or satisfaction, in whole or in part, out of the funds held by or due from the pension system, of any debt, damage, claim, demand, or judgment against any member, survivor, dependent, or any other person.

(b) No part of the funds or any claim to the funds may be directly or indirectly assigned or transferred. Any attempt to transfer or assign any part of the funds or a claim to the funds is void.

(c) The funds shall be held, kept, and disbursed for the purposes provided by this article, and for no other purpose, except that a retired member, survivor, or dependent, at the person's discretion, may have deducted from the person's pension the monthly premium cost of any group insurance program in which the retired member is participating.

(d) A benefit payable under this article may not be reduced or discontinued for any person except under the terms applicable to the benefit at the time the person becomes eligible to receive the benefit.

(e) This section does not prevent the division of the benefits accrued by a member under any court order determined by the board or its designee to be a qualified domestic relations order and the payment of a share of a retired member's benefits or contributions to an alternate payee in accordance with the order.

Confidentiality of Information About Members or Beneficiaries

Sec. 29. (a) Information contained in a record that is in the custody of a fund established under this article concerning an individual member, retiree, survivor, or beneficiary is confidential for purposes of Sections 552.101, 552.102, and 552.117, Government Code. The information may not be disclosed in a form that identifies a specific individual unless the information is disclosed to:

- (1) the individual;
- (2) the individual's attorney, guardian, executor, administrator, or conservator; or
- (3) a person who has written authorization from the individual to receive the information.

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

(c) To carry out the provisions of section 9A of this article, and subject to the confidentiality agreement provided under Section 9A of this article, the board and the pension system must provide the city actuary pursuant to a confidentiality agreement such census data, investment information, and assumptions as are used by the pension system actuary for the pension system's valuation studies and which the city actuary determines is reasonably necessary for the city actuary to perform the studies required by section 9A. Such census data shall not include identifying information for individual members. Other than as included in any RSVS prepared by the city actuary (which may not include or must redact individual information), census data so provided shall not be disclosed and is exempt from an open records request pursuant to Texas Government Code chapter 552 or other applicable state statutory freedom of information act. Specific information relating to individual members or survivors(as opposed to generalized information necessary for performing valuations) must not be disclosed by the city or the city actuary. The confidentiality and disclosure restrictions of this subsection may be waived by written agreement between the city and the board.

(d) Before a union contract is approved by the city, the mayor of the city shall cause the city actuaries to deliver to the mayor a report estimating the impact of the proposed union agreement on pension system costs.

Sec. 30. FORFEITURE OF BENEFITS. Notwithstanding anything to the contrary in this article, none of the benefits provided in this article shall be paid to any member who is convicted after exhausting all appeals of a first-degree felonies defined in the Texas Penal Code or any successor, as amended, relating to or arising out of or in connection with his or her service as a police officer. After the member is finally convicted, the member's spouse may apply for benefits if the member is eligible for a retirement or a delayed retirement benefit, otherwise the member's spouse may apply for a refund of the member's contributions. The refund does not include interest, and neither the city nor the members spouse is eligible for a refund of the contributions the city made on the member's behalf.

SECTION 29. If a city and board have entered into one or more agreements pursuant to article 6243-g, section 27, then except as expressly agreed to in writing by the city and board such agreements are terminated as of the year 2017 effective date and are no longer in effect.

Added by Acts 1999, 76th Leg., ch. 381, Sec. 1, eff. Sept. 1, 1999.

Commented [WK57]: This is not marked as an addition in the draft bill, but clearly is. Also, not sure why is marked as Section 29 as there is already one. What is the purpose of giving the City and the pension board the right to abrogate by agreement.

Sec. 1 amended by Acts 2003, 78th Leg., ch. 1267, Sec. 1, eff. Sept. 1, 2003; Sec. 2(1) and (2) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 2(4-a) added by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 2(7), (11) and (14) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 2(14-a), added by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 2(19) renumbered Sec. 2(17-a) by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 2(22-a) added by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 2(23) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2003; Sec. 3(a) to (d), (f) and (g) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 3, eff. Sept. 1, 2003; Sec. 3(h) added by Acts 2003, 78th Leg., ch. 1267, Sec. 3, eff. Sept. 1, 2003; Sec. 4(a) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 4, eff. Sept. 1, 2003; Sec. 5(b-1) added by Acts 2003, 78th Leg., ch. 1267, 5, eff. Sept. 1, 2003; Sec. 5(d) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 5, eff. Sept. 1, 2003; Sec. 6(e-1) added by Acts 2003, 78th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2003; Sec. 6(f) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2003; Sec. 6(g) and (h) added by Acts 2003, 78th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2003; Sec. 7(d) and (f) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 7, eff. Sept. 1, 2003; Sec. 8(a) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 8, eff. Sept. 1, 2003; Sec. 9 heading and sec. 9(a) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 9, 10, eff. Sept. 1, 2003; Sec. 9(b) repealed by Acts 2003, 78th Leg., ch. 1267, Sec. 24, eff. Sept. 1, 2003; Sec. 11(a) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 11, eff. Sept. 1, 2003; Sec. 12(a), (b), (d), (f) and (g) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 12, eff. Sept. 1, 2003; Sec. 12(h) and (i) added by Acts 2003, 78th Leg., ch. 1267, Sec. 12, eff. Sept. 1, 2003; Sec. 14(b) to (f) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2003; Sec. 14(f-1) added by Acts 2003, 78th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2003; Sec. 14(g), (j) and (l) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2003; Sec. 14(m) added by Acts 2003, 78th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2003; Sec. 15(a) to (d) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2003; Sec. 15(f) repealed by Acts 2003, 78th Leg., ch. 1267, Sec. 24, eff. Sept. 1, 2003; Sec. 15(h) to (k) added by Acts 2003, 78th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2003; Sec. 16(a) and (c) amended by Acts 2003, 78th Leg., ch. 1267, 15, eff. Sept. 1, 2003; Sec. 16(d) repealed by Acts 2003, 78th Leg., ch. 1267, Sec. 24, eff. Sept. 1, 2003; Sec. 16(f) to (h) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 15, eff. Sept. 1, 2003; Sec. 16A added by Acts 2003, 78th Leg., ch. 1267, Sec. 16, eff. Sept. 1, 2003; Sec. 17(h) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 17, eff. Sept. 1, 2003; Sec. 18(a) and (b) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 18, eff. Sept. 1, 2003; Sec. 18(d) added by Acts 2003, 78th Leg., ch. 1267, 18, eff. Sept. 1, 2003. Sec. 20 amended by Acts 2003, 78th Leg., ch. 1267, Sec. 19, eff. Sept. 1, 2003; Sec. 22 amended by Acts 2003, 78th Leg., ch. 1267, Sec. 20, eff. Sept. 1, 2003; Sec. 23 amended by Acts 2003, 78th Leg., ch. 1267, Sec. 21, eff. Sept. 1, 2003; Sec. 25(d) and (e) amended by Acts 2003, 78th Leg., ch. 1267, Sec. 22, eff. Sept. 1, 2003; Sec. 29 added by Acts 2003, 78th Leg., ch. 1267, Sec. 23, eff. Sept. 1, 2003.