

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 276

Short Title: Amend Winston-Salem Firemen's Retire. Fund. (Local)

Sponsors: Senators Horton; and Garrou.

Referred to: Pensions & Retirement and Aging.

March 4, 2003

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE PROVISIONS OF THE WINSTON-SALEM FIREMEN'S
2 RETIREMENT FUND.
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Sections 1 through 32 of Chapter 388 of the 1973 Session
6 Laws, as amended by Chapter 15 of the 1977 Session Laws, Chapter 284 of the 1979
7 Session Laws, Chapter 647 of the 1981 Session Laws, Chapter 464 of the 1983 Session
8 Laws, Chapter 508 of the 1987 Session Laws, Chapter 793 of the 1989 Session Laws,
9 and S.L. 1998-92, read as rewritten:

10 **"Sec. 1.** That the name of the Association herein established shall be Winston-Salem
11 Firemen's Retirement Fund Association, hereinafter referred to as the Association.
12 References to the Association as of a date prior to April 3, 1979, and following July 1,
13 1973, shall mean the Winston-Salem Fire-Public Safety Retirement Fund Association,
14 which was the name of the Association during such period.

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

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

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

1 payments made on and after July 1, 1989, per annum, computed on the amount accrued
2 as of the end of each fiscal year of the Association.

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

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

19 **Sec. 4.** The governing body of the Association shall consist of a Board of Trustees
20 five in number, four from the membership of the Fire Department, and one to be
21 appointed by the Insurance Commissioner of the State of North Carolina.

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

39 **Sec. 6.** Any Trustee may resign at any time by giving notice in writing to the other
40 Trustees. Should any Trustee who is a member of the Fire Department cease to be a
41 member of the Fire Department for any reason, he shall automatically cease to be a
42 Trustee. With regard to any Trustee elected by the members of the Association who
43 resigns or ceases to be a Trustee for any reason, his successor shall be elected as
44 provided in Section 5 of this act. Should the Trustee who was appointed by the

1 Insurance Commissioner of the State of North Carolina resign or cease to be a Trustee
2 for any reason, his successor shall be appointed by the said Insurance Commissioner.

3 **Sec. 7.** The Board of Trustees is herein fully vested with the exclusive right and
4 authority to pay out the funds of this Association, as provided for in this act. All
5 matters and claims provided for under this act shall be passed upon by said Trustees and
6 all decisions and actions of said Trustees shall be binding upon the Association and the
7 members thereof. Every Trustee shall be entitled to one vote except the chairman of the
8 Board of Trustees, who shall be entitled to vote only to break a tie. At every annual
9 meeting of the Board of Trustees, the Trustees shall elect a chairman, vice-chairman,
10 secretary and treasurer. The secretary and treasurer need not be Trustees, and the
11 offices of secretary and treasurer may be combined into a single office, in the discretion
12 of the Trustees. The annual meeting of the Board of Trustees shall be held as soon as is
13 practicable following the end of each calendar year at such place and at such time as
14 shall be determined by the Trustees.

15 **Sec. 8.** ~~The~~As of September 1, 2001, the secretary of the Association (or the
16 secretary-treasurer if such offices shall be combined into a single office) shall be
17 entitled to receive monthly compensation in an amount ~~not to exceed the amount of the~~
18 ~~monthly normal retirement benefit payable for the month for which compensation is~~
19 ~~payable, determined pursuant to Section 19 of this act.~~ to be determined each year by
20 the Trustees. The Trustees, as such, including the chairman and the vice-chairman, shall
21 serve without compensation. The Trustees may authorize reimbursement by the
22 Association to any officer or Trustee of the Association for all expenses incurred by
23 such person in connection with services rendered in behalf of the Association.

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

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

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

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

3 **Sec. 12.** The secretary shall keep in complete form such data as shall be necessary
4 for actuarial valuation of the funds of the Association and for checking the
5 disbursements for and on behalf of the Association. He shall keep minutes of all
6 proceedings of the Board of Trustees and of the Association, and the same shall be kept
7 in a place selected by the Trustees. The treasurer of the Association shall post yearly at
8 each fire station and at the office of fire administration, as soon as practicable following
9 the end of each year, a financial statement of the Association.

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

19 **Sec. 14.** The custodian and the investment manager shall receive compensation for
20 services rendered as may be agreed upon from time to time in writing by the Trustees
21 and by the custodian (with respect to services rendered by the custodian) or the
22 investment manager (with respect to services rendered by the investment manager).
23 The Trustees shall have the authority to employ legal counsel when, in the opinion of
24 the Trustees, legal counsel is necessary. In case of such employment, said counsel shall
25 be paid such fees as may be fair and reasonable as agreed upon in writing by the
26 Trustees and the counsel so employed.

27 **Sec. 15.** On or before August 31, 1987, the Board of Trustees of the Winston-Salem
28 Firemen's Relief Fund shall transfer to the Board of Trustees of the Winston-Salem
29 Firemen's Retirement Fund Association out of properties and funds belonging to the
30 Winston-Salem Firemen's Relief Fund the sum of fifty-four thousand dollars (\$54,000)
31 in cash or assets. The assets so transferred pursuant to the immediately preceding
32 sentence shall be transferred upon the basis of the fair market value thereof as of the
33 date of transfer, and the particular assets to be transferred shall be determined by joint
34 action of the Board of Trustees of the Winston-Salem Firemen's Relief Fund and the
35 Board of Trustees of the Winston-Salem Firemen's Retirement Fund Association. All
36 property of the Association is hereby relieved from any and all claims of the persons
37 entitled to relief from the Winston-Salem Firemen's Relief Fund. The North Carolina
38 Firemen's Association, its officers, members, boards and committees, are also hereby
39 relieved of any claim of any kind whatsoever which may be based on past service,
40 present service or future service in the Winston-Salem Fire Department. The
41 Winston-Salem Firemen's Relief Fund and the officers, members, boards and
42 committees of said Fund, are also hereby relieved of any claim of any kind whatsoever
43 which may be based on past, present or future service in the Winston-Salem Fire

1 Department, if any, so long as any claimant is entitled to benefits or pension under the
2 provisions of this act.

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

8 (1) If he shall have attained at least his 18th birthday and shall not have
9 attained his 40th birthday on the date of such transfer, he shall
10 automatically become a member on such date of transfer. In
11 determining such transferred employee's number of years of
12 continuous employment by the City, employment with the City prior
13 to such transfer shall be taken into account only if such employee shall
14 elect to contribute to the Association the sum of (i) plus (ii) plus (iii),
15 where (i) is the amount of twelve dollars (\$12.00) per month,
16 measured from the date of his hire by the City until earlier of the date
17 of such transfer and June 30, 1998; (ii) is the aggregate amount that the
18 person would have contributed, determined in accordance with Section
19 17 of this act, measured from July 1, 1998, until the date of the
20 transfer, if the transfer occurs on or after July 1, 1998; and (iii) is
21 interest accrued at the rate of eight percent (8%) with respect to any
22 payments made on and after July 1, 1989, per annum, compounded
23 annually on the amount accrued as of the end of each fiscal year of the
24 Association.

25 (2) If he shall have attained at least his 40th birthday on the date of
26 transfer, but had not attained such birthday when last employed by the
27 City, he may elect within 90 days following such transfer to become a
28 member. If he elects to become a member, he shall contribute to the
29 Association the amount he would have contributed if he had become a
30 member on the day next preceding his 40th birthday. In addition, at the
31 option of such employee, he may further elect to contribute such
32 additional amount as he would have contributed prior to his 40th
33 birthday if his employment with the City had been with the Fire
34 Department. Any such contributions shall include interest at the rate of
35 eight percent (8%), applicable to any payments made on and after July
36 1, 1989, per annum, computed on the amount accrued as of the end of
37 each fiscal year of the Association.

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

41 (4) The elections specified in subdivisions (1) and (2) hereof shall be
42 made in writing to the Trustees within 90 days following such transfer,
43 and shall be irrevocable when made (subject to termination of
44 membership upon subsequent separation from employment with the

1 Fire Department). Any contributions (and interest) payable pursuant to
2 such election shall be paid in cash in a lump sum at the time such
3 election shall be filed.

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

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

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

43 (e) If any member of the Association was employed by the Fire Department as a
44 cadet, such member's number of years of employment as a cadet may be added to the

1 period of his continuous employment with the City if, by July 31, 1981, such member
2 contributed to the Association an amount equal to twelve dollars (\$12.00) per month for
3 the time he was a cadet, plus interest at the rate of six percent (6%) per annum,
4 computed on the amount accrued as of the end of each fiscal year of the Association.

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

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

42 **Sec. 17.** The Treasurer of the City shall make a deduction from the salary of each
43 member of the Association due him by the City. ~~The As of September 1, 2001, the~~
44 amount of each such deduction shall be determined as of the first day of each fiscal year

1 payroll period of the City, and shall be equal to the quotient (rounded up to the next
2 whole dollar amount) obtained by dividing (i) the product, rounded to the nearest dollar,
3 of .007 multiplied by the annual starting salary of a firefighter employed by the Fire
4 Department in effect at the beginning of that ~~fiscal year;~~ payroll period; by (ii) the
5 number of payroll periods in that ~~fiscal year;~~ year of the City. The amount so deducted
6 shall be turned over as soon as practicable after the applicable payroll period by the said
7 Treasurer to the custodian of the Association as hereinbefore provided, and the
8 Association shall have the authority to accept donations from any and all sources
9 whatsoever.

10 **Sec. 18.** If at any time there shall not be sufficient assets in the retirement fund of
11 the Association to pay fully the persons entitled to benefits provided herein, such
12 persons shall be paid such benefits on a pro rata basis to the extent the assets of such
13 fund will allow, as shall be determined by the Trustees; provided, that the assets of such
14 fund determined as of the close of any fiscal year of the Association shall in no event be
15 less than one hundred thirty percent (130%) of the present value of current retirees
16 determined as of the close of that fiscal year. Effective on or after July 1, 1998, the
17 Trustees shall obtain a written report from the Association's actuary as of July 1 of each
18 year evenly divisible by two, or more frequently if the Trustees deem advisable, setting
19 forth the present value of the assets of the fund and the present value of current
20 liabilities of current retirees.

21 **Sec. 19. (a)** Whenever any member of the Association has been employed by
22 the City continuously for a period of at least 30 years, such member may make written
23 application to the trustees for his normal retirement benefit, and whenever any member
24 of the Association has been employed by the City continuously for a period of at least
25 25 years but not more than 30 years, such member may make written application to the
26 Trustees for his early retirement benefit; provided, however, that such member must
27 retire from the service of the City to receive such benefits. The normal and early
28 retirement benefits of such member shall be a monthly pension for the remainder of his
29 life, as provided herein below. For this purpose and for the purpose of Section 20
30 hereof, a member shall be deemed to have been employed by the City continuously if
31 such member shall have been employed continuously by any combination of the Fire
32 Department or Police Department (but only such employment by the Police Department
33 as is described in subsection 16(b) and (c) hereof), and the transfer of a member from
34 the employ of one of such organizations to the employ of the other such organization
35 shall not be deemed to be a termination of employment by the City. Provided, that if a
36 member has at least 25 years of employment with the City, but such service is not
37 continuous solely because of a leave of absence lasting not more than a year and not
38 described in Section 26, such member shall be deemed to have continuous employment
39 with the City during such leave of absence; and provided further, that if a member has
40 less than 25 years of employment with the City but the sum of his years of employment
41 with the City plus any leave of absence lasting not more than one year and not described
42 in Section 26, equals or exceeds 25 years, the period of such leave shall be deemed to be
43 continuous employment with the City if such member contributes to the Association
44 twelve dollars (\$12.00) for each month he was on such leave, plus interest at the rate of

1 eight percent (8%), applicable to any payments made on and after July 1, 1989, per
 2 annum, computed on the amount accrued as of the end of each fiscal year of the
 3 Association.

4 (b) Effective beginning July 1, 1989, and ending June 30, 1990, the amount of
 5 the monthly pension for each member who is entitled to receive a normal retirement
 6 benefit (including members who retired prior to July 1, 1989) shall be two hundred
 7 dollars (\$200.00). Effective beginning July 1, 1990, and ending June 30, 1998, the
 8 amount of the monthly pension for each member who is entitled to receive a normal
 9 retirement benefit, including members who retired prior to July 1, 1990, shall be two
 10 hundred fifteen dollars (\$215.00). Effective on and after July 1, 1998, the amount of the
 11 monthly pension for each member who is entitled to receive a normal retirement benefit
 12 (including members who retired prior to that date) shall be two hundred five dollars
 13 (\$205.00). The amount of the monthly pension for each member who is entitled to
 14 receive an early retirement benefit as of any date prior to July 1, 1998, shall be the
 15 product of (1) and (2), where (1) is the applicable percentage listed in the following
 16 table based on his years of continuous employment at his early retirement date, and (2)
 17 is the amount of the payment that he would have received as a normal retirement benefit
 18 under this section as of that date:

Years of Employment at Retirement Date	Percentage of Normal Retirement Benefit
25	85%
26	88%
27	91%
28	94%
29	97%

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

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

Years of Employment at Retirement Date	Percentage of Normal Retirement Benefit
25	70%
26	76%
27	82%
28	88%
29	94%

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

3 (d) Any benefit payable to a member pursuant to this Section 19 shall commence
4 not later than the April 1 immediately following the calendar year in which the member
5 attains age 70 and 1/2 or, if later, the April 1 immediately following the calendar year in
6 which the member retires from the service of the City. Additionally, the distribution of
7 any such benefit shall be made in accordance with the requirements of section 401(a) of
8 the Internal Revenue Code, including the minimum distribution incidental benefit
9 requirement of section 1.401(a)(9)-2 of the Treasury Regulations, which are
10 incorporated herein by reference. With respect to distributions made for the calendar
11 years beginning on or after January 1, 2001, the act will apply the minimum distribution
12 requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the
13 regulations under section 401(a)(9) of the Internal Revenue Code that were proposed on
14 January 17, 2001, notwithstanding any provision of the act to the contrary. This
15 amendment shall continue in effect until the end of the last calendar year beginning
16 before the effective date of final regulations under section 401(a)(9) of the Internal
17 Revenue Code or such other date as may be specified in guidance published by the
18 Internal Revenue Service.

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

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

31 Effective beginning July 1, 1989, and ending June 30, ~~1989,1990,~~ the monthly
32 benefit of a member who retires as a disabled member (including a member who retired
33 as a disabled member prior to July 1, 1989) shall equal eight dollars (\$8.00) times his
34 years of service but in no event more than two hundred dollars (\$200.00) per month.
35 Effective beginning July 1, 1990, and ending June 30, 1998, the monthly benefit of a
36 member (including a member who retires as a disabled member prior to this date) shall
37 equal eight dollars and sixty cents (\$8.60) times his years of service, but in no event
38 more than two hundred fifteen dollars (\$215.00) per month. Effective on and after July
39 1, 1998, the monthly benefit of a member who retires as a disabled member, including a
40 member who retires as a disabled member prior to July 1, 1998, shall equal eight dollars
41 and twenty cents (\$8.20) times his years of service, but in no event more than two
42 hundred five dollars (\$205.00) per month. For this purpose only, years of service shall
43 mean the number of his earned years of service in the employment of the City (as

1 determined pursuant to Section 16(d) of this act). Payments shall be subject to the
2 provisions of Section 18 of this act.

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

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

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

1 **Sec. 23.** No amount payable or held by the Association under this act for the benefit
2 of any member or beneficiary thereof shall be subject in any manner to anticipation,
3 alienation, sale, transfer, assignment, pledge, encumbrance or charge, nor shall any
4 amount payable or held under this act for the benefit of any member or beneficiary
5 thereof be in anywise liable for his debts, contracts, liabilities, engagements, or torts,
6 nor be subject to any legal process to levy upon or attach, but the provisions of this
7 Section 22 shall not be applicable as regards any dealings with or obligations to the
8 Winston-Salem Firemen's Credit Union.

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

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

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

33 **Sec. 27.** If any person entitled to benefits under this act shall be physically or
34 mentally incapable of receiving or acknowledging receipt of such benefits, the Trustees,
35 upon receipt of satisfactory evidence of such incapacity and that another person or
36 institution is maintaining such person entitled to benefits, and that no guardian or
37 committee has been appointed for him, may cause any benefits otherwise payable to
38 him to be made to such person or institution so maintaining him.

39 **Sec. 28.** The provisions of this act shall be administered on an equitable and
40 nondiscriminatory basis, it being the intent hereof that where the Trustees are given
41 discretionary powers, such powers shall be exercised in an equitable manner and so as
42 to prevent discrimination between persons similarly situated. All assets of the
43 Association shall be administered for the exclusive benefit of the members of the
44 Association and their beneficiaries, and as a fund to provide for such members or

1 beneficiaries the benefits provided in this act. It shall be impossible for any part of the
2 principal or income of the retirement fund of the Association to be used for or diverted
3 to purposes other than for the exclusive benefit of the members of the Association or
4 their beneficiaries as provided in this act; except that the Trustees may use such assets
5 to pay the reasonable expenses incurred in administering the said fund and any debts,
6 liabilities or obligations of said fund. The assets and income of the fund shall be
7 exempt from all taxes, including income taxes, imposed by the State of North Carolina
8 or any political subdivision thereof.

9 Sec. 28A.(a) Upon termination of the Association or upon complete
10 discontinuance of contributions to the Association, the rights of all members of the
11 Association to benefits accrued to the date of the termination or discontinuance, to the
12 extent then funded, are nonforfeitable.

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

15 (c) Notwithstanding any provision of the Association to the contrary, the
16 maximum annual benefit payable in the form of a straight life annuity from the
17 Association on behalf of a member, when combined with any benefits from another
18 qualified retirement plan maintained by the Fire Department of the City of Winston-
19 Salem, shall not exceed the amount permitted by section 415 of the Internal Revenue
20 Code.

21 (d) In addition to the other applicable limitations set forth in this act, and
22 notwithstanding any other provision of this act to the contrary, for plan years beginning
23 on or after January 1, 1996, the annual compensation of each member taken into
24 account under this act shall not exceed the OBRA 1993 annual compensation limit. The
25 OBRA 1993 annual compensation limit is one hundred fifty thousand dollars
26 (\$150,000), as adjusted by the Commissioner for increase in the cost of living in
27 accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost of living
28 adjustment in effect for a calendar year applies to any period, not exceeding 12 months,
29 over which compensation is determined (the "determination period") beginning in that
30 calendar year. If a determination period consists of fewer than 12 months, the OBRA
31 1993 annual compensation limit shall be multiplied by a fraction, the numerator of
32 which is the number of months in the determination period, and the denominator of
33 which is 12. If compensation for any prior determination period is taken into account in
34 determining a member's benefits accruing in the current plan year, the compensation for
35 that prior determination period is subject to the OBRA 1993 annual compensation limit
36 in effect for that prior determination period. For this purpose, for determination periods
37 beginning before the first day of the first plan year beginning on or after January 1,
38 1996, the OBRA 1993 annual compensation limit is one hundred fifty thousand dollars
39 (\$150,000). Effective for plan years beginning on or after January 1, 2002, the OBRA
40 1993 annual compensation limit shall be two hundred thousand dollars (\$200,000), as
41 adjusted by the Commissioner for increases in the cost of living in accordance with
42 section 401(a)(17)(B) of the Internal Revenue Code.

43 (e) This subsection applies to distributions made on or after January 1, 2002.
44 Notwithstanding any provision of this act to the contrary that would otherwise limit a

1 distributee's election under this subsection, a distributee may elect, at the time and in the
2 manner prescribed by the Trustees, to have any portion of an eligible rollover
3 distribution paid directly to an eligible retirement plan specified by the distributee in a
4 direct rollover. The following definitions shall apply for purposes of this subsection:

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

9 a. Any distribution that is one of a series of substantially equal
10 periodic payments (not less frequently than annually) made for
11 the life (or life expectancy) of the distributee or the joint lives
12 (or joint life expectancies) of the distributee and the
13 distributee's designated beneficiary, or for a specified period of
14 10 years or more;

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

17 c. Any hardship distribution described in section
18 401(k)(2)(B)(i)(IV) of the Internal Revenue Code.

19 (2) Eligible retirement plan. An eligible retirement plan is an individual
20 retirement account described in section 408(a) of the Internal Revenue
21 Code, an individual retirement annuity described in section 408(b) of
22 the Internal Revenue Code, or a qualified trust described in section
23 401(a) of the Internal Revenue Code, that accepts the distributee's
24 eligible rollover distribution.

25 (3) Distributee. A distributee includes a member or former member of the
26 Association. In addition, the surviving spouse of a member or former
27 member is a distributee with regard to the interest of the member or
28 former member.

29 (4) Direct rollover. A direct rollover is a payment by the Association to
30 the eligible retirement plan specified by the distributee.

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

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

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

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

40 **SECTION 2.** None of the provisions of this act shall create an additional
41 liability for the Winston-Salem Firemen's Retirement Fund Association unless sufficient
42 funds are available to pay fully for the liability.

43 **SECTION 3.** This act becomes effective July 1, 2003.