

1 HB569
2 209932-3
3 By Representative Carns (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 30-MAR-21

1
2 ENROLLED, An Act,

3 Relating to Jefferson County and the General
4 Retirement System for Employees of Jefferson County; to amend
5 Section 45-37-123.20, Sections 45-37-123.21 and 45-37-123.22,
6 as amended by Act 2019-243, 2019 Regular Session, Sections
7 45-37-123.23, 45-37-123.28, 45-37-123.29, 45-37-123.51,
8 45-37-123.83, 45-37-123.84, and 45-37-123.100, Section
9 45-37-123.101 as amended by Act 2019-243, 2019 Regular
10 Session, Section 45-37-123.102, Sections 45-37-123.103 and
11 45-37-123.104, as amended by Act 2019-243, 2019 Regular
12 Session, and Sections 45-37-123.106 and 45-37-123.194 of the
13 Code of Alabama 1975; to authorize the pension board to
14 establish procedures for the election of board members number
15 four and five; to authorize the pension board to post notice
16 of the annual meeting on its website and to meet and conduct
17 business by video or telephone conference; to authorize the
18 pension board to provide tuition reimbursement to its
19 employees; to authorize the pension board to participate in
20 emergency state and federal relief programs; to authorize the
21 pension board to recover costs and reasonable attorney's fees
22 in actions in which the pension board seeks to recover funds
23 of the retirement system erroneously paid to members,
24 beneficiaries, and third parties; to clarify terminology used
25 to describe a joint survivorship pension election; to

1 eliminate the minimum non-service connected disability benefit
2 for disabilities occurring on or after the effective date of
3 this act; to clarify language related to lump-sum payments to
4 a deceased member's beneficiary; to change the required
5 minimum distribution age from 70 1/2 to 72 years of age; and
6 to make technical corrections.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 45-37-123.20, Sections
9 45-37-123.21 and 45-37-123.22, as amended by Act 2019-243,
10 2019 Regular Session, Sections 45-37-123.23, 45-37-123.28,
11 45-37-123.29, 45-37-123.51, 45-37-123.83, 45-37-123.84, and
12 45-37-123.100, Section 45-37-123.101 as amended by Act
13 2019-243, 2019 Regular Session, Section 45-37-123.102,
14 Sections 45-37-123.103 and 45-37-123.104, as amended by Act
15 2019-243, 2019 Regular Session, and Sections 45-37-123.106 and
16 45-37-123.194 of the Code of Alabama 1975, are amended to read
17 as follows:

18 "§45-37-123.20.

19 "(a) Provisions of records. The county shall provide
20 all records and documents necessary to determine an employee's
21 status and eligibility for membership in the plan, upon which
22 a service record shall be created.

23 "(b) Contributions. The county shall contribute an
24 amount equal to six percent of an employee's compensation from
25 the county's general assets to the trust fund, as provided in

1 Section 45-37-123.80. The county also shall withhold six
2 percent of an employee's compensation each pay period as
3 provided in Section 45-37-123.82. The county also shall
4 contribute any amounts received pursuant to Section 45-37-233,
5 attributable to pistol permits. ~~These funds shall be given to~~
6 ~~the county treasurer for deposit into the trust fund.~~
7 Additionally, the county may pay into the trust fund from the
8 general funds of the county, in such installments or times as
9 the county may elect, an amount or amounts sufficient to
10 assure that the system is actuarially sound.

11 "§45-37-123.21.

12 "(a) General administration. The role of the pension
13 board is established by the State of Alabama through
14 legislative act. The pension board is responsible for the
15 general administration and proper operation of the plan. The
16 pension board also is responsible for making effective the
17 provisions of the act.

18 "(b) Composition of pension board. The pension board
19 is comprised of five members, designated respectively as
20 member number one, member number two, member number three,
21 member number four, and member number five.

22 "(1) MEMBER NUMBER ONE. Member number one shall be
23 appointed by the governing body of the county and shall serve
24 as chairman of the pension board. Member number one shall have
25 a minimum of 10 years' experience in an executive capacity in

1 insurance, investment management/consultant, or actuarial
2 work. The initial term of member number one shall be for one
3 year; and thereafter the term of member number one shall be
4 for three years.

5 "(2) MEMBER NUMBER TWO. Member number two shall be
6 appointed by the judge of probate, who is an elected official
7 of the county. Member number two shall have a minimum of 10
8 years' experience in an executive capacity in investing or
9 banking. The initial term of member number two shall expire at
10 the end of two years; and thereafter the term of member number
11 two shall be for three years.

12 "(3) MEMBER NUMBER THREE. Member number three shall
13 be appointed by the Jefferson County Personnel Board. Member
14 number three shall have a minimum of 10 years' experience as a
15 certified public accountant. The initial term of member number
16 three shall expire at the end of three years; and the term of
17 member number three shall be for three years.

18 "(4) MEMBERS NUMBER FOUR AND FIVE. Member number
19 four and member number five shall be elected by the members of
20 the system. Member number four shall be a retired member of
21 the system. Member number five shall be a member of the
22 system. The initial term of member number four shall be for
23 one year; and thereafter the term of member number four shall
24 be for three years. Member number five shall be elected for
25 terms of three years.

1 "(c) Procedure for the election of board members
2 four and five and selection of the election board.

3 "(1) Elections of member number four and member
4 number five shall be conducted by separate paper or electronic
5 ballot pursuant to procedures established by the pension
6 board.

7 "(2) The members of the system shall elect member
8 number four and member number five. ~~The election shall be held~~
9 ~~at the annual meeting of the members of the system provided~~
10 ~~for in Section 45-37-123.22(b)(14), or at a special meeting~~
11 ~~called for that purpose; provided that there shall be no such~~
12 ~~election at a special meeting unless the pension board has~~
13 ~~given~~ The pension board shall give at least 15 days' written
14 notice of the time and ~~place~~ procedure of the election by
15 posting the same in at least three prominent places in the
16 county courthouse and by delivering three copies of the same
17 to the county manager who shall inform all persons on the
18 county payroll of the election; however, the failure to inform
19 all such employees of the election shall not invalidate the
20 election.

21 "(3) The elections of member number four and member
22 number five shall be supervised by three members of the system
23 serving as the election board. The members that serve as the
24 election board shall be appointed by the members of the system
25 at the annual meeting as provided for in Section

1 45-37-123.22(b) (14). If the members of the system fail to
2 appoint members to the election board, or if any member so
3 appointed cannot or will not serve on the election board, the
4 pension board shall appoint the members of the election board.
5 The pension board may prescribe additional rules for the
6 elections of member number four and member number five not
7 inconsistent with the provisions hereof.

8 "(d) Vacancy, how filled. If a vacancy occurs on the
9 pension board, such vacancy shall be filled for the unexpired
10 term in the same manner as the office was previously filled.

11 "(e) Resignation or removal of pension board member.
12 A member of the pension board may resign by delivering a
13 written resignation to the executive director or be removed by
14 the unanimous vote of the other members of the pension board
15 at a duly called meeting of the pension board.

16 "(f) Secretary. The secretary of the board shall be
17 the executive director.

18 "(g) Salary and expenses. The members of the pension
19 board shall serve without pay, but shall be reimbursed for
20 expenses actually paid or incurred in the discharge of their
21 official duties, and shall suffer no loss of salary or wages,
22 if employed by the county, through service on the board.

23 "§45-37-123.22.

24 "(a) The pension board shall be responsible for the
25 general administration and proper operation of the plan, and

1 shall administer the plan for the exclusive benefit of the
2 members and their beneficiaries, subject to the specific terms
3 of the plan. The pension board shall administer the plan in
4 accordance with its terms and shall have the power and
5 discretion to construe the terms of the plan and the act and
6 to determine all questions arising in connection with the
7 administration, interpretation, and application of the plan.
8 Any such determination by the pension board shall be
9 conclusive and binding upon all persons. The pension board may
10 establish procedures, correct any defect, supply any
11 information, or reconcile any inconsistency in such manner and
12 to such extent as shall be deemed necessary or advisable to
13 carry out the purpose of the plan; provided, however, that any
14 procedure, discretionary act, interpretation, or construction
15 shall be done in a nondiscriminatory manner based upon uniform
16 principles consistently applied and shall be consistent with
17 the intent that the plan shall continue to be deemed a
18 qualified plan under the terms of § 401(a), Internal Revenue
19 Code, and shall comply with the terms of the act and all
20 regulations issued pursuant thereto. The pension board shall
21 have all powers necessary or appropriate to accomplish the
22 pension board's duties under the plan.

23 "(b) The pension board shall be charged with the
24 duties of the general administration of the plan as set forth

1 under the terms of the plan, including, but not limited to,
2 all of the following:

3 "(1) To determine all questions relating to the
4 eligibility of employees to participate or remain a member
5 hereunder and to receive benefits under the plan.

6 "(2) To compute and certify the amount and the kind
7 of benefits to which any member shall be entitled hereunder.

8 "(3) To maintain all necessary records for the
9 administration of the plan.

10 "(4) To interpret the provisions of the plan and to
11 make and publish such rules for regulation of the plan as are
12 consistent with the act and the terms hereof.

13 "(5) To establish rules and regulations for the
14 administration of plan funds and for the transaction of the
15 plan's business.

16 "(6) To exercise any investment discretion in a
17 manner designed to accomplish specific objectives related to
18 the plan's long-term and short-term liquidity needs.

19 "(7) To prepare and provide active members with an
20 annual estimated benefit statement notifying them of their
21 estimated benefits.

22 "(8) To prepare and provide retired members with a
23 one-time notification of their benefit payment amounts, and to
24 provide retired members with periodic notification of cost of

1 living benefit increases which may be awarded by the pension
2 board in any form, lump sum, or otherwise.

3 "(9) To determine the validity of, and take
4 appropriate action with respect to, any divorce decree, or
5 other judicial order presented to the pension board.

6 "(10) To assist any member regarding the member's
7 rights, benefits, or elections available under the plan.

8 "(11) To, by written agreement or designation,
9 appoint at its option an investment manager, qualified under
10 the Investment Company Act of 1940, as amended, investment
11 adviser, or other agent to provide direction regarding any or
12 all of the plan assets. Such appointment shall specifically
13 identify the plan assets with respect to which the investment
14 manager or other agent shall have authority to direct the
15 investment.

16 "(12) To establish an investment policy.

17 "(13) To establish a privacy policy for the
18 protection of a member's personal information, subject to
19 applicable law.

20 "(14) To hold an annual meeting of the members at
21 least once per calendar year and provide at least seven days'
22 written notice of the meeting to all members on the retirement
23 system website or at either their place of work, last known
24 address, or by electronic mail.

1 "(15) To determine appropriate rules and regulations
2 to determine how much service per calendar year is equivalent
3 to one year of service, in accordance with Section
4 45-37-123.84.

5 "(16) To develop rules and regulations, amend the
6 plan, subject to the provisions of Section 45-37-123.150, and
7 provide for increases in benefits, subject to the provisions
8 of Section 45-37-123.151.

9 "(17) Notwithstanding any provisions of the plan to
10 the contrary, to amend the plan in order to comply with
11 federal law, and any such amendment shall be given full effect
12 under Alabama law.

13 "(18) To purchase insurance coverage in such forms
14 and amounts as may be determined by the pension board.

15 "(19) To provide employees of the system with
16 health, dental, vision, and other forms of insurance, paid
17 vacation, ~~and~~ sick leave, tuition reimbursement, and any other
18 benefits as determined by the pension board.

19 "(20) To provide members of the system with
20 voluntary life, disability, and other forms of insurance, the
21 cost of which is paid by the member.

22 "(21) To conduct meetings and business by video
23 conference, telephone conference, or electronic communication.

1 "(22) To participate in emergency relief programs of
2 the United States, the State of Alabama, and their
3 departments, agencies, and instrumentalities.

4 "(23) To recover costs and reasonable attorney's
5 fees in actions in which the pension board seeks to recover
6 funds of the retirement system erroneously paid to members,
7 beneficiaries, and third parties.

8 "(c) Failure of the pension board to follow any
9 provisions or procedures in the plan shall not constitute a
10 waiver of any provision or procedure contained herein.

11 "§45-37-123.23.

12 "(a) Records. The pension board shall keep ~~a record~~
13 ~~of all of its proceedings, which shall be open to public~~
14 ~~inspection~~ minutes of its meetings. Additionally, the pension
15 board shall keep all other books of account, records,
16 policies, compensation records, service records, and other
17 data that may be necessary for proper administration of the
18 plan and shall be responsible for supplying all information
19 and reports to the Internal Revenue Service, members,
20 beneficiaries, and others as may be required by law.

21 "(b) Correction of records.

22 "(1) The pension board shall correct any error in a
23 member's service record which the pension board concludes is
24 necessary to correct or remove an injustice or prevent a
25 member from receiving less or more than such member is

1 entitled to receive under the plan. The pension board shall
2 adopt written rules prescribing the procedure the pension
3 board shall follow in considering whether an error in an
4 employee's service record should be corrected. Correction of
5 service records shall be subject to the following limitations:

6 "a. No error in the service record shall be
7 corrected except by the pension board.

8 "b. The pension board shall not correct any error in
9 an employee's service record until it has accorded, or offered
10 to accord, the employee a hearing regarding the proposed
11 correction, which hearing shall not be conducted until after
12 the employee has received at least two weeks' notice of the
13 nature of the proposed correction and of the time and place at
14 which the proposed correction shall be considered.

15 "c. No correction of an error shall be made at an
16 employee's request unless the employee files with the pension
17 board his or her written request for such correction before
18 the date that is one year subsequent to the employee's
19 discovery of the error requested to be corrected; provided,
20 however, the pension board may excuse an employee's failure to
21 file such application for correction within one year following
22 his or her discovery of such error if the pension board finds
23 that excusing such failure would be most equitable.

24 "(2) If the pension board determines that any amount
25 has been erroneously deducted from the compensation of an

1 employee and paid into the trust fund as an employee
2 contribution, or that any amount has been otherwise paid into
3 the trust fund erroneously ~~upon~~ on behalf of any employee,
4 such amount shall be refunded to the employee, and any amount
5 which may have been paid erroneously to match such erroneous
6 contribution shall be refunded. The pension board is
7 authorized to determine whether interest shall be payable on
8 any amounts returned and to determine the amount of ~~such~~
9 interest to be paid, if any; provided, however, that no
10 interest shall be paid to any employee responsible for the
11 error resulting in the erroneous payment.

12 "(c) Audit. The pension board shall cause an audit
13 to be made of its affairs by a certified public accountant at
14 least once each calendar year.

15 "§45-37-123.28.

16 "(a) Claims for benefits under the plan shall be
17 filed in writing with the ~~pension coordinator~~ executive
18 director on forms provided by the pension board in accordance
19 with procedures established by the pension board ~~and/or the~~
20 ~~pension coordinator~~ or the executive director, or both. The
21 procedure and documents to be produced by a member or
22 beneficiary may differ depending on the type of benefit claim
23 being made.

24 "(b) The pension board may allow a properly
25 designated power of attorney to act on behalf of a member or

1 beneficiary so long as the act is authorized under the terms
2 of the power of attorney documentation.

3 "§45-37-123.29.

4 "Any employee, former employee, or beneficiary of
5 either, who has been denied a benefit by a decision of the
6 pension board pursuant to a claim made under Section
7 45-37-123.28 shall be entitled to request the pension board to
8 give further consideration to a claim by filing with the
9 pension board a written request for a hearing. Such request
10 shall be filed with the pension board no later than 60 days
11 after receipt of the written notification of denial. The
12 pension board shall then conduct a hearing as soon as
13 administratively feasible. The hearing shall typically be held
14 at the pension board's regular ~~monthly~~ meeting. A final
15 decision as to the claim shall be made by the pension board as
16 soon as administratively feasible after receipt of the appeal
17 and the claimant shall be notified in writing of the decision.
18 In the event of a denial of a disability retirement benefit
19 claim, a new disability retirement benefit claim may not be
20 made for at least six months from the date of the last appeal
21 denial, unless otherwise determined in the discretion of the
22 pension board or the ~~pension coordinator~~ executive director.

23 "§45-37-123.51.

24 "The pension board shall determine the eligibility
25 of each employee for membership in the system based upon

1 information furnished by ~~the~~ Jefferson County ~~Personnel Board~~
2 or its designated agent. Such determination shall be
3 conclusive and binding upon all persons. Additionally, if the
4 pension board makes a determination upon an employee's date of
5 hire by the employer that such employee is an eligible
6 employee, then such employee shall continue to participate in
7 the plan, even if such employee subsequently no longer meets
8 the definition of an eligible employee under Section
9 45-37-123.01, unless the pension board's initial determination
10 was erroneous.

11 "§45-37-123.83.

12 "The pension board and county are authorized to
13 contribute to the trust fund any monies received in the form
14 of donations, gifts, appropriations, bequests, or otherwise,
15 or derived therefrom. Additionally, any member or beneficiary
16 who fails to make timely application for the amount of his or
17 her employee contributions pursuant to Section 45-37-123.104
18 shall be deemed to have forfeited and donated ~~such~~ employee
19 contributions to the trust fund. In no event shall any
20 forfeitures under the plan result in an increase in the
21 benefit to be paid to any member. The ~~pension coordinator~~
22 executive director shall provide one certified letter to the
23 member within 60 days following the member's termination of
24 employment advising the member of the foregoing forfeiture

1 provisions. See also Section 45-37-123.194 for additional
2 forfeiture provisions.

3 "§45-37-123.84.

4 "Except as otherwise specifically stated herein, the
5 rules below shall apply in determining length of service for
6 all purposes under the plan.

7 "(1) In no case may more than one year of service be
8 credited for service in one calendar year.

9 "(2) A member shall work over one-half of a month,
10 including all calendar days, in order to earn one month of
11 service.

12 "(3) Except as otherwise specifically stated herein
13 or required by federal law, a member shall not be allowed
14 service credit for any period of more than one-half of a month
15 during which such member is absent without pay.

16 "(4) A member shall receive service credit for any
17 and all paid leaves of absence, including a paid Family and
18 Medical Leave Act leave, regardless of the length of the leave
19 and regardless of the performance of any services. For
20 member's terminating employment between August 1, 1993 and
21 January 31, 2010, up to three months of service credit was
22 granted to members on unpaid Family and Medical Leave Act
23 leaves.

24 "(5) Years of paid membership time are used in com-
25 puting benefits under the plan, as are months of paid member-

1 ship time. Months shall be converted into a fraction of a year
2 as follows:

3	"1 month	.0833
4	"2 months	.1667
5	"3 months	.2500
6	"4 months	.3333
7	"5 months	.4167
8	"6 months	.5000
9	"7 months	.5833
10	"8 months	.6667
11	"9 months	.7500
12	"10 months	.8333
13	"11 months	.9167
14	"12 months	1.0000

15 "(6) The pension board may disregard a fractional
16 part of a year in computing paid membership time or unpaid
17 membership time that is less than one-twelfth of a year.

18 "(7) Notwithstanding any provision of the plan to
19 the contrary, effective December 12, 1994, contributions,

1 benefits, and service shall be provided in accordance with §
2 414(u), Internal Revenue Code, relating to military leave.

3 "(8) Service before and after ~~rehires~~ reemployment
4 by the county shall also be calculated in accordance with
5 Section 45-37-123.54.

6 "§45-37-123.100.

7 "(a) Superannuation retirement benefit.

8 "(1) ELIGIBILITY. A member shall be eligible for a
9 superannuation retirement benefit if:

10 "a. The member has 30 or more years of paid
11 membership time, regardless of age;

12 "b. The member has 10 or more years of paid
13 membership time and has attained the age of 60; or

14 "c. The member has 30 years of service, 20 years of
15 which are paid membership time, and has attained the age of
16 55.

17 "(2) CALCULATION OF BENEFIT. If a member meets the
18 foregoing eligibility criteria, then the member shall be
19 eligible to retire and receive a monthly benefit for the
20 remainder of his or her life to be determined by the following
21 formula:

22 "a. Two and one-half percent multiplied by the basic
23 average salary multiplied by the number of years of paid
24 membership time; plus

1 **"b. ~~Five-eighths~~ Five-eighths** of one percent
2 multiplied by the basic average salary multiplied by the
3 number of years of unpaid membership time, if applicable.

4 **"(3) SEVENTY-FIVE PERCENT LIMITATION.**

5 Notwithstanding the foregoing, no member shall receive any
6 retirement benefit in excess of 75 percent of his or her basic
7 average salary. This 75 percent limitation shall only be
8 applied at the time that the beginning retirement benefit is
9 determined and shall not limit increases granted to retired
10 members subsequent to their retirement. Additionally, this 75
11 percent limitation shall be applied before applying any
12 actuarial adjustments to reflect ~~survivor benefits~~ an election
13 of a joint survivorship pension.

14 **"(4) SECTION 401(a)(17), INTERNAL REVENUE CODE,**
15 **LIMITATION.** Notwithstanding the foregoing provisions of this
16 subsection, after applying the § 401(a)(17), Internal Revenue
17 Code, compensation limit set forth in subdivision (11) of
18 Section 45-37-123.01, the pension board, with the assistance
19 of an actuary, shall determine the adjustments to any or all
20 of the components or factors of the benefit formula, other
21 than paid membership time, unpaid membership time, and/or the
22 basic average salary as limited by the compensation limit that
23 would be necessary to yield the maximum benefit specified
24 under this part, without regard to § 401(a)(17), Internal
25 Revenue Code; the pension board shall then use such adjusted

1 benefit formula to determine the maximum benefit due from the
2 plan, subject, however, to Subpart 6, Internal Revenue Code,
3 Section 415 limitations.

4 "(5) ELIGIBILITY FOR JOINT SURVIVORSHIP PENSION. A
5 member that is entitled to a superannuation retirement benefit
6 shall be entitled to instead elect a joint survivorship
7 pension, as provided for under Section 45-37-123.101.

8 "(6) DEATH. If a member dies while receiving payment
9 of a superannuation retirement benefit, the return of any
10 remaining portion of his or her employee contributions shall
11 be governed by Section 45-37-123.104(5)d. If the member has
12 received payments in an amount at least equal to the amount of
13 employee contributions he or she made to the plan at the time
14 of death, then no further payments shall be made upon the
15 member's death.

16 "(b) Early retirement benefits.

17 "(1) REGULAR EARLY RETIREMENT. A member may elect,
18 but is not required, to retire prior to age 60 if the member
19 has completed 30 or more years of service, 10 of which, but
20 not the total 30, are paid membership time. In the event that
21 a member makes such an election, such member shall be entitled
22 to receive an early retirement benefit equal to the member's
23 benefit that would be payable pursuant to subsection (a), but
24 with an actuarial equivalent reduction for each year less than
25 60 years of age, as follows:

Reduced Retirement Benefit on
 Account of Retirement before
 Age 60 Expressed as a Percent-
 age of the Superannuation Re-
 tirement Benefit under subsec-
 tion (a)

1	"Age of Member on	
2	Last Birthday Pre-	
3	ceding Retirement	
4	"59	93%
5	"58	87%
6	"57	82%
7	"56	77%
8	"55	72%
9	"54	68%
10	"53	64%
11	"52	60%
12	"51	57%
13	"50	54%
14	"49	51%
15	"48	48%

16 "(2) TWENTY-FIVE YEAR EARLY RETIREMENT BENEFIT. On
 17 and after April 24, 2003, a member with at least 25 years of
 18 paid membership time, but less than 30 years of paid

1 membership time, who is not eligible for a superannuation
2 retirement benefit may elect to retire early, but is not
3 required to do so. In the event that a member makes such an
4 election, such member shall be entitled to receive a 25-year
5 early retirement benefit equal to the member's benefit that
6 would be payable under superannuation retirement benefit
7 pursuant to subsection (a), but with an actuarial equivalent
8 reduction of seven percent for each whole year less than 30
9 years. For purposes of the seven percent reduction, months are
10 not counted.

11 "(3) ELIGIBILITY FOR JOINT SURVIVORSHIP PENSION. A
12 member that is entitled to an early retirement benefit shall
13 be entitled to instead elect a joint survivorship pension, as
14 provided for under Section 45-37-123.101.

15 "(4) DEATH. If a member dies while receiving payment
16 of an early retirement benefit, the return of any remaining
17 portion of his or her employee contributions shall be governed
18 by Section 45-37-123.104(5)d. If the member has received
19 payments in an amount at least equal to the amount of employee
20 contributions he or she made to the plan at the time of death,
21 then no further payments shall be made upon the member's
22 death.

23 "(c) Deferred retirement benefits.

24 "(1) GENERAL RULES FOR DEFERRED RETIREMENT BENEFITS.

1 "a. Ineligibility for Deferred Retirement Benefit if
2 Eligible for Superannuation Retirement Benefit. If a member is
3 eligible for a superannuation retirement benefit, then he or
4 she is not eligible for a deferred retirement benefit.

5 "b. Withdrawal of Employee Contributions. A member
6 who has elected a deferred retirement benefit may at any time
7 before payment of such benefit commences withdraw in full his
8 or her employee contributions, without interest. However, no
9 deferred retirement benefit shall be paid to a member who
10 withdraws such employee contributions.

11 "c. Eligibility for Joint Survivorship Pension. A
12 member that is entitled to a deferred retirement benefit shall
13 be entitled to instead elect a postretirement joint
14 survivorship pension provided for under Section 45-37-123.101.

15 "d. Death. If a member dies before or after payment
16 of his or her deferred retirement benefit commences, the
17 return of his or her employee contributions to the plan shall
18 be governed by Section 45-37-123.104(5)b. or d., respectively.

19 "(2) REGULAR DEFERRED RETIREMENT BENEFIT.

20 "a. Eligibility. Subject to the general eligibility
21 requirements stated in subdivision (1), a member may elect a
22 regular deferred retirement benefit if he or she has at least
23 10 years of paid membership time.

24 "b. Calculation of Benefit/Vesting. The regular
25 deferred retirement benefit shall be calculated by multiplying

1 the superannuation retirement benefit that the member would
2 have been entitled to had he or she been 60 years of age when
3 he or she terminated employment, times a percentage, which
4 percentage shall be determined based upon the member's paid
5 membership time, as follows:

6 "1. Ten years of paid membership time: 50 percent.

7 "2. Eleven years of paid membership time: 60
8 percent.

9 "3. Twelve years of paid membership time: 70
10 percent.

11 "4. Thirteen years of paid membership time: 80
12 percent.

13 "5. Fourteen years of paid membership time: 90
14 percent.

15 "6. Fifteen or more years of paid membership time:
16 100 percent.

17 "c. Commencement of Payment. Payment of a member's
18 regular deferred retirement benefit shall commence upon the
19 date that the member reaches the age of 60 and shall continue
20 for the life of the member, regardless of whether the member
21 is employed with another employer at the time payment is to
22 commence.

23 "(3) INVOLUNTARY DEFERRED RETIREMENT BENEFIT.

24 "a. 20/55 Provisions. Subject to the general
25 eligibility requirements stated in subdivision (1), a member

1 who is not entitled to voluntarily retire pursuant to
2 subsection (a), superannuation retirement benefit, or
3 subdivision (1) of subsection (b), regular early retirement
4 benefit, but who is involuntarily retired after accumulating
5 20 years of service with the county, at least 10 of which is
6 paid membership time, shall be entitled to receive a monthly
7 benefit computed in accordance with the formula set forth in
8 subsection (a), superannuation retirement benefit, the payment
9 of which shall commence upon his or her retirement if he or
10 she has attained the age of 55; if the member has not attained
11 the age of 55, payment shall be delayed until the member's
12 attainment of age 55.

13 "b. 18/60 Provisions. Subject to the general
14 eligibility requirements stated in subdivision (1) and to this
15 paragraph, a member who is not entitled to voluntarily retire
16 pursuant to subsection (a), superannuation retirement benefit,
17 or subdivision (1) of subsection (b), regular early retirement
18 benefit, but who is involuntarily retired after accumulating
19 18 years of service with the county, at least 10 of which is
20 paid membership time, shall be entitled to receive a monthly
21 benefit computed in accordance with the formula set forth in
22 subsection (a), superannuation retirement benefit, the payment
23 of which shall commence as set forth below.

24 "1. Member contributions. In order to receive a
25 benefit under paragraph b., a member shall contribute to the

1 plan from the date of the member's involuntary retirement to
2 the date that the benefit commences, by the last day of each
3 calendar month: (i) the amount of employee contributions that
4 he or she would have made if he or she had continued to be
5 employed by the county at the same salary as he or she was
6 receiving at the time of his or her termination of employment,
7 plus (ii) the amount which the county would have contributed
8 to the plan on the member's behalf if he or she had continued
9 to be employed by the county at the same salary as he or she
10 was receiving at the time of his or her termination of
11 employment.

12 "2. Commencement of payment. Payment of a member's
13 involuntary deferred retirement benefit under paragraph b.
14 shall commence upon the earlier of: (i) the date on which the
15 member attains the age of 60; or (ii) the date on which the
16 member would have completed 30 years of service with the
17 county, if he or she had continued employment with the county,
18 regardless of whether the member is employed with another
19 employer at the time payment is to commence; provided however,
20 that if at the time payment of the deferred retirement benefit
21 commences, he or she has not attained the age of 60, the
22 amount of his or her monthly benefit computed in accordance
23 with subsection (a), superannuation retirement benefit, shall
24 be reduced in the same manner as the early retirement benefit
25 is reduced under subdivision (1) of subsection (b).

1 "(d) Offset for payment of hospital, surgical, and
2 medical benefits. To the extent that the county, with
3 sufficient advance written notice, so directs the system, the
4 system shall offset the monthly benefit amount payable to a
5 retired member by an amount, determined by the county, needed
6 to pay for the member's premiums for certain hospital,
7 surgical, and/or medical benefits sponsored by the county. The
8 system shall pay such withheld amounts to the county on a
9 monthly basis. In the event that the county makes an error in
10 its written direction to the system, the system shall not be
11 required to correct such error by adjusting its withholdings;
12 rather, such error shall be corrected between the county and
13 the member. At any time a written opinion from a competent
14 actuary selected by the commission is made indicating that the
15 funds and assets of the system are not actuarially sound, then
16 the benefits of this subsection shall cease to be in effect
17 until such time as an actuary appointed by the commission
18 gives a written opinion that the system is financially sound.
19 Any such actuarial services shall be paid for by the system.

20 "§45-37-123.101.

21 "(a) Election of postretirement joint survivorship
22 pension. In lieu of a benefit under subsections (a) to (c),
23 inclusive, of Section 45-37-123.100, superannuation retirement
24 benefit, early retirement benefit, or deferred retirement

1 benefit, respectively, a member may elect to receive a
2 postretirement joint survivorship pension.

3 "(1) PERCENTAGE ELECTION. In the event that a member
4 desires to elect pursuant to this subsection to receive a
5 postretirement joint survivorship pension, he or she shall
6 elect one of the following percentages, which election shall
7 be the actuarial equivalent of the monthly retirement benefit
8 provided in subsections (a) to (c), inclusive, of Section
9 45-37-123.100, as applicable:

10 "a. Reduced monthly benefit payable over the life of
11 the member and the life of the member's designated
12 beneficiary, 50 percent postretirement joint survivorship
13 pension.

14 "b. Reduced monthly benefit payable over the life of
15 the member and the life of the member's designated
16 beneficiary, 66 and two-thirds percent postretirement joint
17 survivorship pension.

18 "c. Reduced monthly benefit payable over the life of
19 the member and the life of the member's designated
20 beneficiary, 75 percent postretirement joint survivorship
21 pension.

22 "d. Reduced monthly benefit payable over the life of
23 the member and the life of the member's designated
24 beneficiary, 100 percent postretirement joint survivorship
25 pension.

1 "(2) FORM OF POSTRETIREMENT JOINT SURVIVORSHIP
2 PENSION. In addition to electing a percentage under
3 subdivision (1), a member who desires to elect to receive a
4 postretirement joint survivorship pension shall elect one of
5 the following two forms:

6 "a. Pop-up Form. Under the pop-up form, if the
7 member's beneficiary predeceases the retired member, then in
8 the month following the beneficiary's death, the member's
9 monthly pension benefit shall pop-up to the amount that would
10 have been payable to the member under subsections (a) to (c),
11 inclusive, of Section 45-37-123.100, as applicable, as if the
12 member had never elected a postretirement joint survivorship
13 pension; the cost of a pop-up form is more than the cost of
14 the regular form described in paragraph b.

15 "b. Regular Form. Under the regular form, if the
16 member's beneficiary predeceases the retired member, then the
17 member shall continue to receive the same amount that he or
18 she was receiving prior to the beneficiary's death. The amount
19 of the benefit payment shall not change.

20 "(b) Timing of election. Except as provided in the
21 immediately following sentence, in the event that a member
22 desires to elect a postretirement joint survivorship pension,
23 he or she shall do so in writing, on a form provided by the
24 pension board, no later than the member's last day of
25 employment. In the event that a member previously elected a

1 deferred retirement benefit and desires to elect a
2 postretirement joint survivorship pension, he or she shall do
3 so in writing, on a form provided by the pension board, no
4 later than the day before the member's sixtieth birthday.

5 "(c) Timing of payments. Payment to the member
6 commences on the day after the member terminates employment
7 and shall continue to be paid each month thereafter until the
8 member's death. If the member's beneficiary survives after the
9 death of the member, the postretirement joint survivorship
10 pension payments shall be made monthly to the beneficiary,
11 beginning on the first day of the month following the member's
12 death, assuming that the pension board is notified of the
13 death in a timely manner. Payments shall terminate with the
14 first monthly payment preceding the second to die of the
15 member and the beneficiary. In the event that a refund is to
16 be paid pursuant to Section 45-37-123.104(4)c., such payment
17 shall be made as soon as administratively feasible following
18 the member's/beneficiary's deaths.

19 "(d) Cost of postretirement joint survivorship
20 pension. To the extent that a member elects payment of a
21 postretirement joint survivorship pension for his or her
22 beneficiary, the benefit otherwise payable to the member shall
23 be actuarially reduced to reflect the ~~survivorship benefits~~
24 election of a joint survivorship pension.

1 "(e) Changes in election. At any time before
2 termination of employment, the member may cancel his or her
3 election to have payment in such form by completing a form
4 provided by the pension board. Except as otherwise stated
5 herein, the member's election of a postretirement joint
6 survivorship pension shall be irrevocable once the member
7 terminates employment.

8 "(1) DEATH. a. Death of Member Prior to Actual
9 Retirement. In the event that a member dies prior to his or
10 her actual retirement, any postretirement joint survivorship
11 pension election he or she made shall be deemed void.

12 "b. Death of Beneficiary Before Payments Commence.
13 In the event that a member elects a postretirement joint
14 survivorship pension and his or her beneficiary dies before
15 payments commence, then upon the beneficiary's death, the
16 member's election of the postretirement joint survivorship
17 pension shall be automatically canceled, and the member's
18 right to receive payments in accordance with subsections (a)
19 to (c), inclusive, of Section 45-37-123.100, as applicable,
20 shall be reinstated.

21 "c. Death of Both Member and Beneficiary-Refund.
22 Except as provided in the immediately following sentence, in
23 the event that a payment begins to the member, no refund of
24 employee contributions shall be paid thereafter.
25 Notwithstanding the foregoing sentence, in the event that the

1 member and his or her beneficiary die, a refund shall be made
2 in accordance with Section 45-37-123.104(4)c.

3 "(2) DIVORCE. In the event that a married member
4 names his or her spouse as beneficiary, a subsequent divorce
5 of the member and the beneficiary shall not cancel an election
6 of a postretirement joint survivorship pension. However, in
7 the event that a member or beneficiary presents to the pension
8 board what the pension board believes to be a valid divorce
9 decree, settlement agreement, or domestic relations order,
10 collectively, a DRO, that provides for a waiver or forfeiture
11 of the postretirement joint survivorship pension, then such
12 waiver or forfeiture shall be recognized by the pension board,
13 and, accordingly, the postretirement joint survivorship
14 pension shall be deemed void, and the member's monthly pension
15 benefit shall thereafter pop-up to the amount that would have
16 been payable to the member under subsections (a) to (c) of
17 Section 45-37-123.100, as applicable, as if the member had
18 never elected a postretirement joint survivorship pension.
19 Such pop-up shall occur in the month following the pension
20 board's receipt and approval of the DRO. The member shall not
21 be allowed to ~~continue any survivor benefits by designating~~
22 ~~another beneficiary~~ elect another joint survivorship pension.
23 See also Section 45-37-123.194(a) for additional rules
24 relating to certain DROs.

1 "(f) Beneficiary designation. Any beneficiary
2 designation made by a member for a preretirement joint
3 survivorship pension shall automatically lapse upon the
4 member's retirement or other termination of employment, and
5 such member shall complete new forms, to be provided by the
6 pension board, to designate a beneficiary of any
7 postretirement joint survivorship pension, in accordance with
8 Section 45-37-123.103(d).

9 "(g) Proof of death and marriage. The pension board
10 may require proper proof of death or marriage in accordance
11 with Section 45-37-123.103(f).

12 "§45-37-123.102.

13 "(a) Non-service connected disability benefits. Sub-
14 ject to subsection (h), any member who, after accumulating 10
15 years of paid membership time, experiences a total disability
16 as a result of a non-service connected disability shall be
17 entitled to receive, at the time set forth in subsection (e),
18 monthly disability retirement benefits determined in accor-
19 dance with Section 45-37-123.100, as though the disabled mem-
20 ber were entitled to a superannuation retirement benefit at
21 the commencement of the disability; however, there shall be a
22 percentage reduction of such benefit to reflect early com-
23 mencement of the payment, such percentage to be based on the
24 member's whole years from actual eligibility for a superannua-
25 tion retirement benefit, as set forth below. Notwithstanding

any provisions to the contrary, the minimum monthly disability retirement benefit payable in connection with a non-service connected disability occurring before the effective date of the act adding this amendatory language, shall be 50 percent of the monthly compensation the member was receiving at the time he or she experienced a total disability.

"Number of Whole Years Until Eligibility for Superannuation Retirement Benefit	Percentage Reduction of Superannuation Retirement Benefit
"1	93%
"2	87%
"3	82%
"4	77%
"5	72%
"6	68%
"7	64%
"8	60%
"9	57%
"10	54%
"11 or more	50%

1 "(b) Service connected disability benefits. Subject
2 to subsection (h), any member who experiences a total
3 disability as a result of a service connected disability shall
4 be entitled to receive monthly disability retirement benefits
5 in an amount equal to 60 percent of the member's monthly
6 compensation that he or she was receiving at the time he or
7 she experienced a total disability.

8 "(c) Partial disability benefits. In the event that
9 a member experiences a partial disability in connection with
10 either a non-service connected disability or a service
11 connected disability, the pension board and its medical
12 advisor shall determine the percentage of disability suffered,
13 and the member shall be entitled to the proportion of the
14 amount which would have been payable if the disability were a
15 total disability.

16 "(d) Disqualification from receipt of disability
17 benefits. No disability retirement benefits shall be paid if
18 the use of intoxicating liquor, narcotic drugs, or willful
19 misconduct of the disabled member caused, or substantially
20 contributed to, the disability or if the cause of the
21 disability was voluntarily and willfully caused by the
22 disabled member.

23 "(e) Timing of payment. Payment of disability
24 retirement benefits provided for by this section shall

1 commence when the member separates from employment with the
2 county and ceases to receive his or her compensation subject
3 to the employee contribution requirements set forth in Section
4 45-37-123.80 and once a determination of disability has been
5 made by the pension board.

6 "(f) Reexamination of members receiving disability
7 benefits. Disability retirement benefits under this section
8 shall only continue for such time as the member continues to
9 experience a total disability, or a partial disability as
10 determined under subsection (c). The pension board may require
11 any member receiving disability retirement benefits to submit
12 to a medical examination by the medical advisor. If the member
13 refuses to undergo the medical examination ordered by the
14 pension board, the member's disability retirement benefits may
15 be discontinued until the member consents to the examination.
16 If a member's disability retirement benefits are discontinued
17 based on the member's refusal to allow a reexamination by the
18 medical advisor, the member shall wholly lose such benefits
19 between the date of the member's refusal or failure to allow
20 the examination and the date of examination thereafter made.
21 Should the medical advisor report to the pension board that
22 the member receiving disability retirement benefits is able to
23 resume his or her usual occupation, such member shall be
24 restored to his or her former position if the member's
25 position is in the service of the county; otherwise, the

1 member shall be placed on the appropriate layoff list of the
2 county and shall not receive any additional payments for
3 disability on and after the date the member is reemployed by
4 the county or fails or refuses to accept such reemployment. If
5 the member is reemployed by the county, the member shall
6 resume employee contributions immediately upon reemployment in
7 accordance with Section 45-37-123.80. Provided however, the
8 pension board shall in no case make additional disability
9 retirement benefit payments to a member on a particular
10 disability claim beyond six months from the date the medical
11 advisor reports to the pension board that the member is able
12 to resume his or her usual occupation.

13 "(g) Ineligibility for joint survivorship pension
14 option. A member electing a disability retirement benefit
15 shall not be entitled to elect a joint survivorship pension
16 provided under Section 45-37-123.101, though ~~such~~ a member may
17 elect a 25-year early retirement benefit if such member has
18 met the eligibility requirements set forth in Section
19 45-37-123.100(b)(2).

20 "(h) Ineligibility for disability retirement benefit
21 if eligible for a superannuation retirement benefit. In the
22 event that a member is eligible for a superannuation
23 retirement benefit pursuant to Section ~~45-37-123.1(a)~~
24 45-37-123.100(a), such member shall not be eligible for a
25 disability retirement benefit.

1 "(i) Death. If a member dies while receiving payment
2 of a disability retirement benefit, the return of any
3 remaining portion of his or her employee contributions shall
4 be governed by Section 45-37-123.104(5)d. If the member has
5 received payments in an amount at least equal to the amount of
6 employee contributions he or she made to the plan at the time
7 of death, then no further payments shall be made upon the
8 member's death.

9 "§45-37-123.103.

10 "(a) Preretirement death benefits. A vested member's
11 beneficiary is entitled to a preretirement joint survivorship
12 pension, as described below.

13 "(1) MARRIED MEMBER. If a married, active member
14 dies, then the beneficiary may elect, on a form provided by
15 the pension board, to be paid in one of the following forms:

16 "a. One Hundred Percent Preretirement Joint
17 Survivorship Pension. If such member was eligible for a
18 deferred retirement benefit at the time of the member's death,
19 then the beneficiary may elect to be paid in the form of a 100
20 percent preretirement joint survivorship pension, which is a
21 monthly annuity paid during the beneficiary's lifetime which
22 is equal to the actuarial equivalent of the benefits that
23 would have been paid to the member if, instead of dying, the
24 member had terminated employment~~or~~.

1 "b. Refund. The beneficiary may elect a refund of
2 the member's employee contributions in accordance with Section
3 45-37-123.104(4)b.

4 "(2) UNMARRIED MEMBER. If an unmarried, active
5 member dies, then one of the following shall apply:

6 "a. Preretirement Joint Survivorship Pension. If a
7 member becomes eligible for a deferred retirement benefit,
8 then the member may elect, on a form provided by the pension
9 board, a 100 percent preretirement joint survivorship pension,
10 which is a monthly annuity paid during the beneficiary's
11 lifetime which is equal to the actuarial equivalent of the
12 benefits that would have been paid to the member if, instead
13 of dying, the member had terminated employment. In the event
14 the beneficiary dies before the member or in the event the
15 member marries, any election of a preretirement joint
16 survivorship pension automatically shall be revoked and the
17 cost, as described in subdivision (2) of subsection (c), for
18 the preretirement coverage shall cease to accumulate on the
19 date of death of the beneficiary or the member's date of
20 marriage, as applicable.

21 "b. Refund. Regardless of whether the member makes
22 an election for the beneficiary to be paid in the form of a
23 preretirement joint survivorship pension in accordance with
24 paragraph a., upon the member's death, the beneficiary can
25 elect to be paid a refund of the member's employee

1 contributions in accordance with Section 45-37-123.104(4)b.
2 instead of being paid a preretirement joint survivorship
3 pension.

4 "(b) Timing of payments. In the event of an election
5 of a preretirement joint survivorship pension, such payment
6 shall begin as soon as administratively feasible after the
7 pension board is notified of the death. In any event,
8 calculation of the amount of the death benefit shall be made
9 as of the day after the date of death and any payments that do
10 not occur as of the month following the date of death shall be
11 included in future payments. In the event that a refund is to
12 be paid, such payment shall be made as soon as
13 administratively feasible following the member's death.

14 "(c) Cost of preretirement joint survivorship
15 pension.

16 "(1) MARRIED MEMBERS.

17 "a. On and After October 1, 1999. On and after
18 October 1, 1999, the 100 percent preretirement joint
19 survivorship pension shall be provided without additional
20 charge with respect to a member who is married at the time of
21 his or her death, and the cost of such benefit shall be borne
22 by the system; however, in the event that a member designates
23 a non-spousal beneficiary in accordance with subdivision
24 (d)(1), the cost of such benefit shall be borne by the
25 member's beneficiary.

1 "b. Prior to October 1, 1999. Prior to October 1,
2 1999, a 50 percent preretirement joint survivorship pension
3 was provided to a member who was married at the time of his or
4 her death, instead of 100 percent, and such members and their
5 beneficiaries had an option to elect higher percentages under
6 certain rules. Members and beneficiaries who elected a higher
7 than 50 percent preretirement joint survivorship pension prior
8 to October 1, 1999, shall be charged for the increased
9 percentage according to actuarially-calculated costs,
10 beginning with the date of the election through September 30,
11 1999.

12 "(2) UNMARRIED MEMBERS. To the extent that a member
13 who is not married at the time of his or her death previously
14 elected payment of a preretirement joint survivorship pension
15 for his or her beneficiary, the benefit otherwise payable to
16 the member shall be actuarially reduced to reflect the
17 ~~survivorship benefits~~ the election of a joint survivorship
18 pension.

19 "(d) Beneficiaries.

20 "(1) PRERETIREMENT JOINT SURVIVORSHIP PENSION FOR A
21 MARRIED MEMBER. Unless otherwise elected in the manner
22 prescribed below, the beneficiary of a preretirement joint
23 survivorship pension of a member that is married at the time
24 of his or her death shall be the member's surviving spouse.

1 Except, however, a member may designate a beneficiary other
2 than the spouse if:

3 "a. The spouse has waived the right to be the
4 member's beneficiary; or

5 "b. The member has been abandoned, within the
6 meaning of local law, and the member has a court order to such
7 effect; or

8 "c. The member has no spouse.

9 "(2) ALL OTHER DEATH BENEFITS. Except as provided in
10 subdivision (1), a member, whether married or not, may
11 designate any beneficiary, and may do so without the need of
12 the consent of a spouse for a nonspousal beneficiary
13 designation.

14 "(3) FORMS. Designation of a beneficiary shall be
15 made on a form provided by the pension board. A member may at
16 any time revoke a designation of a beneficiary or change a
17 beneficiary by filing written notice of ~~such~~ revocation or
18 change with the pension board on a form provided by the
19 pension board. However, in the case of a preretirement joint
20 survivorship pension, the member's spouse shall again consent
21 in writing to any change in beneficiary unless the original
22 consent acknowledged that the spouse had the right to limit
23 consent only to a specific beneficiary and that the spouse
24 voluntarily elected to relinquish such right. For a spouse's
25 waiver to be valid, the signature of the spouse executing such

1 form shall be notarized. This consent to waiver shall become
2 irrevocable upon the death of the member.

3 "(4) FAILURE TO DESIGNATE A BENEFICIARY OR LACK OF
4 BENEFICIARY. In the event no valid designation of beneficiary
5 exists, or if the beneficiary is not alive at the time of the
6 member's death, the death benefit shall be payable to the
7 member's spouse if there is a spouse, and if there is no
8 spouse, to the member's estate. If there is no estate, the
9 death benefit may be interpleaded into a court of competent
10 jurisdiction. Additionally, if the beneficiary does not
11 predecease the member, but dies prior to the distribution of
12 the death benefit, the death benefit shall be paid to the
13 beneficiary's estate. If there is no estate, the death benefit
14 may be interpleaded into a court of competent jurisdiction.

15 "(5) MORE THAN ONE BENEFICIARY. In the event that
16 more than one primary beneficiary is designated and a
17 designated primary beneficiary dies, absent any direction on
18 the beneficiary designation form to the contrary, the member's
19 benefit shall be divided equally among the remaining primary
20 beneficiaries.

21 "(6) DESIGNATION OF NONPERSONS AS BENEFICIARIES. A
22 member may designate a nonperson as a beneficiary, for
23 example, a trust or estate. In such event, the pension board
24 may require additional documentation, for example, trust
25 documents.

1 "(7) LAPSE OF BENEFICIARY DESIGNATION. Any
2 beneficiary designation made by a member for a preretirement
3 joint survivorship pension or refund shall automatically lapse
4 upon the member's election of a postretirement joint
5 survivorship pension; at that time, the member shall complete
6 new forms, to be provided by the pension board, to designate a
7 beneficiary of any postretirement joint survivorship pension.

8 "(8) EFFECT OF MARRIAGE OR DIVORCE UPON A
9 BENEFICIARY DESIGNATION. Except in the case of a preretirement
10 joint survivorship pension, marriage or divorce does not
11 change any previous beneficiary designation. In the case of a
12 preretirement joint survivorship pension, if an unmarried
13 member gets married, such member's spouse shall automatically
14 become the member's beneficiary, which can thereafter be
15 waived in accordance with subdivision (1).

16 "(9) DISTRIBUTION FOR MINOR OR INCOMPETENT
17 BENEFICIARY. In the event a distribution is to be made to a
18 minor or incompetent beneficiary, then the pension board may
19 direct that such distribution be paid to the legal guardian,
20 or if none in the case of a minor beneficiary, to a parent of
21 such beneficiary or a responsible adult with whom the
22 beneficiary maintains residence, or to the custodian for such
23 beneficiary under the Uniform Gift to Minors Act or Gift to
24 Minors Act, if ~~such is~~ permitted by the laws of the state in
25 which the beneficiary resides. Such a payment to the legal

1 guardian, custodian, or parent of a minor beneficiary shall
2 fully discharge the trustee, the county, the pension board,
3 and the plan from further liability on account thereof. The
4 pension board may require evidence of guardianship, existence
5 of custodial accounts, or any other documentation that is
6 deemed prudent to establish that payment shall be made
7 properly.

8 "(e) Other death benefits. Upon a member's
9 retirement or other termination of employment, any
10 preretirement joint survivorship pension benefit coverage
11 ceases. Any other benefits to be paid upon the death of a
12 member or beneficiary, such as refunds, are governed by
13 Section 45-37-123.104(4).

14 "(f) Proof of death and marriage. The pension board
15 may require ~~such~~ proper proof of death and marriage and ~~such~~
16 evidence of the right of any person to receive the death
17 benefit payable as a result of the death of a member as the
18 pension board may deem desirable. ~~Such proof~~ Proof may include
19 a certified marriage certificate, certified death certificate
20 of the member, and affidavits of relatives, members, or other
21 persons knowledgeable of the fact of marriage. If no marriage
22 certificate is available and for common law marriage, proof
23 shall include evidence of the existence of the marriage as may
24 be required by law and also may require indemnification and
25 hold harmless agreements. The pension board may require that

1 unclear cases be adjudicated in an appropriate court
2 proceeding. An unmarried member may be required by the pension
3 board to sign an affidavit to certify that such member is not
4 married. The pension board's determination of death benefits
5 and the right of any person to receive payment shall be
6 conclusive.

7 "§45-37-123.104.

8 "The following provisions generally govern a
9 member's withdrawal and refund of employee contributions under
10 the plan. Any member who fails to make application for the
11 amount of his or her employee contributions pursuant to this
12 section within five years after his or her separation from the
13 service of the county, except as otherwise provided herein or
14 otherwise determined by the pension board, shall be deemed to
15 have forfeited and donated such employee contributions to the
16 trust fund pursuant to Section 45-37-123.83. The foregoing
17 five year rule only applies to a member; in the case of a
18 beneficiary, the pension board may only forfeit employee
19 contributions after it has exhausted reasonable efforts to
20 locate the beneficiary.

21 "(1) WITHDRAWAL OF EMPLOYEE CONTRIBUTIONS BY MEMBERS
22 NOT ENTITLED TO A DEFERRED RETIREMENT BENEFIT. In the event
23 that a member ceases to be an employee of the county for
24 reasons other than retirement, death, or disability before he
25 or she is eligible for a deferred retirement benefit, such

1 member, upon written application therefore to the pension
2 board, shall be paid the full amount of his or her employee
3 contributions, without interest.

4 "(2) WITHDRAWAL OF EMPLOYEE CONTRIBUTIONS BY MEMBERS
5 ENTITLED TO A DEFERRED RETIREMENT BENEFIT.

6 "a. General Rule. Subject to the limitations stated
7 in paragraph b., in the event that a member ceases to be an
8 employee of the county for reasons other than retirement,
9 death, or disability when he or she is eligible for a deferred
10 retirement benefit, but has not elected a deferred retirement
11 benefit, such member, upon written application therefore to
12 the pension board, shall be paid the full amount of his or her
13 employee contributions, with interest. The provisions of
14 Section 45-37-123.100(c)(1)b. shall govern the withdrawal of
15 employee contributions for any member who has elected a
16 deferred retirement benefit, but has not yet been paid.

17 "b. Rules and Regulations. The pension board shall
18 establish rules and regulations setting forth the amount of
19 interest payable to members under this subdivision. In
20 establishing such rules and regulations, the pension board
21 shall take into consideration the interest the system has
22 earned on the employee contributions paid into the trust fund
23 on account of the member withdrawing such employee
24 contributions. The pension board may amend such rules and
25 regulations at any time in its sole discretion.

1 "(3) PARTIAL REFUND OF EMPLOYEE CONTRIBUTIONS AND
2 CESSATION OF EMPLOYEE CONTRIBUTIONS AND EMPLOYER
3 CONTRIBUTIONS. When a member attains 30 years of paid
4 membership time, the member may elect to terminate his or her
5 employee contributions by filing with the pension board a
6 statement signed by the member stating that he or she elects
7 to terminate his or her employee contributions; in such case,
8 the employer contribution to the trust fund on the member's
9 behalf shall cease. As soon as practicable after a member
10 files such statement, the pension board shall refund to him or
11 her all employee contributions, without interest, made by him
12 or her to the trust fund subsequent to the date on which the
13 member accumulated sufficient service to entitle him or her to
14 the maximum benefit that can be provided under the plan;
15 additionally the pension board shall refund to the county any
16 associated employer contributions, without interest.

17 "(4) REFUNDS UPON DEATH OF A MEMBER.

18 "a. Refund of Employee Contributions for Deceased,
19 Nonvested Active Members Not Entitled to Deferred Retirement
20 Benefits. If a nonvested active member dies, then an amount
21 equal to the total amount of such member's employee
22 contributions, without interest, ~~shall~~ may be refunded to the
23 member's beneficiary in ~~one~~ lump sum ~~payment~~ form.

1 "b. Refund of Employee Contributions for Deceased,
2 Vested Members Entitled to Deferred Retirement Benefits, but
3 No Payments Have Commenced.

4 "1. Eligibility. Unless an election has been made in
5 accordance with Section 45-37-123.103 to receive a
6 preretirement joint survivorship pension, if a vested member
7 dies, before payments have commenced, then an amount equal to
8 the total amount of such member's employee contributions, with
9 interest, shall be refunded to the member's beneficiary in ~~one~~
10 lump sum ~~payment~~ form. This rule shall apply regardless of
11 whether the member dies while active, or after a deferred
12 retirement election has been made, so long as payments have
13 not commenced.

14 "2. Rules and regulations. The pension board is
15 authorized to adopt interest rules and regulations providing
16 for the pension board to pay to a beneficiary interest at the
17 rate prescribed in such rules on the member's employee
18 contributions that are to be refunded to the beneficiary. The
19 interest rules and regulations established shall prescribe the
20 terms and conditions on which such interest shall be payable
21 and may impose such limitations on the payment of interest as
22 the pension board deems appropriate.

23 "c. Refund of Employee Contributions for Deceased
24 Members Who Previously Elected a Postretirement Joint
25 Survivorship Pension.

1 "1. Eligibility - Retired member. Subject to items
2 (i) to (iii), inclusive, of subparagraph 2., if a retired
3 member dies after a postretirement joint survivorship pension
4 has been elected, then a refund may be paid in ~~one~~ lump sum
5 form only as set forth in subparagraph 2.

6 "2. Rules and regulations. The pension board is
7 authorized to adopt rules and regulations providing for the
8 pension board to refund a member's employee contributions
9 after such member dies with a postretirement joint
10 survivorship pension election in place and to pay interest on
11 any such refund, subject to the conditions and limitations
12 stated below:

13 "(i) Such postretirement joint survivorship pension
14 election shall not be repealed or rescinded but shall be in
15 effect at the time of the refund, and the member shall have
16 enough service at the time of his or her death to be entitled
17 to a deferred retirement benefit if a refund were not made;
18 and

19 "(ii) Both the member and the member's primary
20 beneficiary shall be deceased, thus, no refund is payable in
21 the event that only the member dies while receiving payment of
22 a postretirement joint survivorship pension; and

23 "(iii) The member's employee contributions shall
24 exceed the sum of all monthly retirement benefits the plan has
25 paid to the member and/or the member's beneficiary.

1 "3. Amount of refund. If each of the requirements in
2 subparagraph 1. and subparagraph 2. are met, and the pension
3 board has adopted rules and regulations in accordance with
4 subparagraph 2., then the amount of the refund shall be equal
5 to the amount by which the member's employee contributions
6 exceed the sum of all monthly retirement benefits the plan has
7 paid to such member and/or such member's beneficiary, with
8 interest as provided by rules and regulations adopted by the
9 pension board.

10 "4. Payment made to contingent beneficiary. A refund
11 pursuant to this paragraph shall be paid to the member's
12 designated contingent beneficiary, or, to the member's estate
13 if the contingent beneficiary also is deceased or there is no
14 other properly designated contingent beneficiary.

15 "5. Death while active member. In the event that an
16 active member dies after a postretirement joint survivorship
17 pension has been elected, such election shall be deemed void
18 and the provisions of Section 45-37-123.103(a), preretirement
19 death benefits, shall apply.

20 "d. Refund of Employee Contributions for Deceased
21 Members Who Were Receiving Superannuation, Early, Disability,
22 or Deferred Retirement Benefit Payments. In the event that a
23 member dies while receiving a superannuation retirement
24 benefit, an early retirement benefit, a disability retirement
25 benefit, or a deferred retirement benefit, then his or her

1 beneficiary shall be entitled to receive a refund in an amount
2 equal to the amount by which the member's employee
3 contributions exceed the sum of all monthly retirement
4 benefits the plan has paid to such member, with interest.

5 "e. Proof of Death and Marriage. The pension board
6 may require proper proof of death or marriage in accordance
7 with Section 45-37-123.103(f).

8 "(5) EMPLOYER CONTRIBUTIONS REMAIN IN TRUST FUND.
9 Employer contributions are never refunded to the member or the
10 member's beneficiary. All associated employer contributions
11 shall remain in the trust fund, except such employer
12 contributions that are returned to the county pursuant to
13 subdivision (7).

14 "(6) CESSATION OF EMPLOYMENT. Unless otherwise
15 specifically provided in the plan, such as, pursuant to
16 subdivision (7), a member shall cease to be an employee of the
17 county in order to receive a refund of employee contributions.

18 "(7) REFUNDS TO CORRECT ERRORS. The pension board,
19 in its sole discretion, may refund employee contributions and
20 associated employer contributions to the county to correct
21 various errors, such as, inclusion in the plan of an
22 ineligible individual or overpayment of employee
23 contributions, in accordance with Section 45-37-123.23(b).

24 "(8) NO REFUNDS FOR QUALIFIED MILITARY SERVICE.
25 There shall be no refund of any contributions attributable to

1 amounts that the county restores pursuant to Section
2 45-37-123.80(b) due to a member's qualified military service.

3 "(9) TIMING OF REFUND PAYMENTS. In the event that a
4 refund is to be paid, such payment shall be made as soon as
5 administratively practical following the date upon which
6 entitlement to the refund occurs.

7 "(10) REFUND TO INCLUDE AMOUNTS TRANSFERRED FROM
8 457(b) PLAN. In the event that any member transfers amounts
9 from a § 457(b), Internal Revenue Code, plan in accordance
10 with Section 45-37-123.190(b), a refund shall include such
11 transferred amounts, with interest if the member is vested.

12 "§45-37-123.106.

13 "(a) General rules.

14 "(1) EFFECTIVE DATE. Except as otherwise provided
15 herein, the provisions of this section shall apply for
16 purposes of determining required minimum distributions for
17 calendar years beginning on and after January 1, 1987.

18 "(2) REQUIREMENTS OF TREASURY REGULATIONS
19 INCORPORATED. All distributions required under this section
20 shall be determined and made in accordance with § 401(a)(9),
21 Internal Revenue Code, including the incidental death benefit
22 requirement in § 401(a)(9)(G), and the regulations thereunder.

23 "(3) PRECEDENCE. Subject to the joint and survivor
24 annuity requirements of the plan, the requirements of this

1 section shall take precedence over any inconsistent provisions
2 of the plan.

3 "(b) Time and manner of distribution.

4 "(1) REQUIRED BEGINNING DATE. The member's entire
5 interest shall be distributed, or begin to be distributed, to
6 the member no later than the member's required beginning date.

7 "(2) DEATH OF MEMBER BEFORE DISTRIBUTIONS BEGIN. If
8 the member dies before distributions begin, the member's
9 entire interest shall be distributed, or begin to be
10 distributed, no later than as follows:

11 "a. Life Expectancy Rule, Spouse is Beneficiary. At
12 the election of the member or, if no election is made by the
13 member, then at the election of the member's designated
14 beneficiary, if the member's surviving spouse is the member's
15 sole designated beneficiary, then distributions to the
16 surviving spouse shall begin by December 31st of the calendar
17 year immediately following the calendar year in which the
18 member died, or by December 31st of the calendar year in which
19 the member would have attained age ~~70-1/2~~ 72, if later.

20 "b. Life Expectancy Rule, Spouse is Not Beneficiary.
21 At the election of the member or, if no election is made by
22 the member, then at the election of the member's designated
23 beneficiary, if the member's surviving spouse is not the
24 member's sole designated beneficiary, then distributions to
25 the designated beneficiary shall begin by December 31st of the

1 calendar year immediately following the calendar year in which
2 the member died.

3 "c. Five-Year Rule.

4 "1. At the election of the member or, if no election
5 is made by the member, then at the election of the member's
6 designated beneficiary, if the member dies before
7 distributions begin and there is a designated beneficiary,
8 then the member's entire interest shall be distributed to the
9 designated beneficiary by December 31st of the calendar year
10 containing the fifth anniversary of the member's death. If the
11 member's surviving spouse is the member's sole designated
12 beneficiary and the surviving spouse dies after the member but
13 before distributions to either the member or the surviving
14 spouse begin, then this paragraph shall apply as if the
15 surviving spouse were the member. This paragraph shall apply
16 to all distributions.

17 "2. Members or beneficiaries may elect on an
18 individual basis whether the 5-year rule in this paragraph or
19 the life expectancy rule in paragraph a. or paragraph b., and
20 subsection (e) applies to distributions after the death of a
21 member who has a designated beneficiary. The election shall be
22 made no later than the earlier of September 30th of the
23 calendar year in which distribution would be required to begin
24 under paragraph a. or paragraph b., or by September 30th of
25 the calendar year which contains the fifth anniversary of the

1 member's, or, if applicable, surviving spouse's, death under
2 this paragraph. If neither the member nor beneficiary makes an
3 election under this subparagraph, distributions shall be made
4 in accordance with paragraph a. or paragraph b., and
5 subsection (e).

6 "d. No Designated Beneficiary, Five-Year Rule. If
7 there is no designated beneficiary as of September 30th of the
8 year following the year of the member's death, the member's
9 entire interest shall be distributed by December 31st of the
10 calendar year containing the fifth anniversary of the member's
11 death.

12 "e. Surviving Spouse Dies Before Distributions
13 Begin.

14 "1. If the member's surviving spouse is the member's
15 sole designated beneficiary and the surviving spouse dies
16 after the member but before distributions to the surviving
17 spouse begin, then this subsection, other than paragraph a.,
18 shall apply as if the surviving spouse were the member.

19 "2. For purposes of this subsection and subsection
20 (e), distributions are considered to begin on the member's
21 required beginning date, or, if this paragraph applies, the
22 date distributions are required to begin to the surviving
23 spouse under paragraph a. If annuity payments irrevocably
24 commence to the member before the member's required beginning
25 date, or to the member's surviving spouse before the date

1 distributions are required to begin to the surviving spouse
2 under paragraph a., the date distributions are considered to
3 begin is the date distributions actually commence.

4 "(3) FORM OF DISTRIBUTION. Unless the member's
5 interest is distributed in the form of an annuity purchased
6 from an insurance company or in a single sum on or before the
7 required beginning date, as of the first distribution calendar
8 year distributions shall be made in accordance with
9 subsections (c), (d), and (e). If the member's interest is
10 distributed in the form of an annuity purchased from an
11 insurance company, distributions thereunder shall be made in
12 accordance with the requirements of § 401(a)(9), Internal
13 Revenue Code, and the regulations thereunder. Any part of the
14 member's interest which is in the form of an individual
15 account described in § 414(k), Internal Revenue Code, shall be
16 distributed in a manner satisfying the requirements of §
17 401(a)(9) and the regulations thereunder applicable to
18 individual accounts.

19 "(c) Determination of amount to be distributed each
20 year.

21 "(1) GENERAL ANNUITY REQUIREMENTS. A member who is
22 required to begin payments as a result of attaining his or her
23 required beginning date, whose interest has not been
24 distributed in the form of an annuity purchased from an
25 insurance company or in a single sum before such date, may

1 receive ~~such~~ payments in the form of annuity payments under
2 the plan. Payments under such annuity shall satisfy the
3 following requirements:

4 "a. The annuity distributions shall be paid in
5 periodic payments made at intervals not longer than one year~~7.~~

6 "b. The distribution period shall be over a life, or
7 lives, or over a period certain not longer than the period
8 described in subsection (d) or subsection (e)~~7.~~

9 "c. Once payments have begun over a period certain,
10 the period certain shall not be changed even if the period
11 certain is shorter than the maximum permitted.

12 "d. Payments shall either be nonincreasing or
13 increase only to the extent permitted by one of the following
14 conditions:

15 "1. By an annual percentage increase that does not
16 exceed the annual percentage increase in a cost-of-living
17 index that for a 12-month period ending in the year during
18 which the increase occurs or the prior year~~7.~~

19 "2. By a percentage increase that occurs at
20 specified times, such as, at specified ages, and does not
21 exceed the cumulative total of annual percentage increases in
22 an eligible cost-of-living index since the annuity starting
23 date, or if later, the date of the most recent percentage
24 increase. In cases providing ~~such~~ a cumulative increase, an

1 actuarial increase may not be provided to reflect the fact
2 that increases were not provided in the interim years7.

3 "3. To the extent of the reduction in the amount of
4 the member's payments to provide for a survivor benefit upon
5 death, but only if the beneficiary whose life was being used
6 to determine the distribution period described in subsection
7 (d) dies or is no longer the member's beneficiary pursuant to
8 a qualified domestic relations order within the meaning of §
9 414(p), Internal Revenue Code7.

10 4. To allow a beneficiary to convert the survivor
11 portion of a joint and survivor annuity into a single sum
12 distribution upon the member's death7.

13 "5. To pay increased benefits that result from a
14 plan amendment or other increase in the member's accrued
15 benefit under the plan7.

16 "6. By a constant percentage, applied not less
17 frequently than annually, at a rate that is less than five
18 percent per year7.

19 "7. To provide a final payment upon the death of the
20 member that does not exceed the excess of the actuarial
21 present value of the member's accrued benefit, within the
22 meaning of § 411(a)(7), Internal Revenue Code, calculated as
23 of the annuity starting date using the applicable interest
24 rate and the applicable mortality table under § 417(e),
25 Internal Revenue Code, or, if greater, the total amount of

1 employee contributions, over the total of payments before the
2 death of the member, ~~or~~.

3 "8. As a result of dividend or other payments that
4 result from actuarial gains, provided:

5 "(i) Actuarial gain is measured not less frequently
6 than annually;

7 "(ii) The resulting dividend or other payments are
8 either paid no later than the year following the year for
9 which the actuarial experience is measured or paid in the same
10 form as the payment of the annuity over the remaining period
11 of the annuity, beginning no later than the year following the
12 year for which the actuarial experience is measured;

13 "(iii) The actuarial gain taken into account is
14 limited to actuarial gain from investment experience;

15 "(iv) The assumed interest rate used to calculate
16 such actuarial gains is not less than three percent; and

17 "(v) The annuity payments are not also being
18 increased by a constant percentage as described in
19 subparagraph 6.

20 "(2) AMOUNT REQUIRED TO BE DISTRIBUTED BY REQUIRED
21 BEGINNING DATE.

22 "a. In the case of a member whose interest in the
23 plan is being distributed as an annuity pursuant to
24 subdivision (1), the amount that shall be distributed on or
25 before the member's required beginning date, or, if the member

1 dies before distributions begin, the date distributions are
2 required to begin under paragraph a. or b. of subdivision ~~(c)~~
3 (2) of subsection (b), is the payment that is required for one
4 payment interval.

5 "The second payment need not be made until the end
6 of the next payment interval even if that payment interval
7 ends in the next calendar year.

8 "Payment intervals are the periods for which
9 payments are received, such as, bimonthly, monthly,
10 semi-annually, or annually. All of the member's benefit
11 accruals as of the last day of the first distribution calendar
12 year shall be included in the calculation of the amount of the
13 annuity payments for payment intervals ending on or after the
14 member's required beginning date.

15 "b. In the case of a single sum distribution of a
16 member's entire accrued benefit during a distribution calendar
17 year, the amount that is the required minimum distribution for
18 the distribution calendar year, and thus not eligible for
19 rollover under § 402(c), Internal Revenue Code, is determined
20 under this paragraph. The portion of the single sum
21 distribution that is a required minimum distribution is
22 determined by treating the single sum distribution as a
23 distribution from an individual account plan and treating the
24 amount of the single sum distribution as the member's account
25 balance as of the end of the relevant valuation calendar year.

1 If the single sum distribution is being made in the calendar
2 year containing the required beginning date and the required
3 minimum distribution for the member's first distribution
4 calendar year has not been distributed, the portion of the
5 single sum distribution that represents the required minimum
6 distribution for the member's first and second distribution
7 calendar year is not eligible for rollover.

8 "(3) ADDITIONAL ACCRUALS AFTER FIRST DISTRIBUTION
9 CALENDAR YEAR. Any additional benefits accruing to the member
10 in a calendar year after the first distribution calendar year
11 shall be distributed beginning with the first payment interval
12 ending in the calendar year immediately following the calendar
13 year in which such amount accrues. Notwithstanding the
14 preceding, the plan shall not fail to satisfy the requirements
15 of this subdivision and § 401(a)(9), Internal Revenue Code,
16 merely because there is an administrative delay in the
17 commencement of the distribution of the additional benefits
18 accrued in a calendar year, provided that the actual payment
19 of such amount commences as soon as practicable. However,
20 payment shall commence no later than the end of the first
21 calendar year following the calendar year in which the
22 additional benefit accrues, and the total amount paid during
23 such first calendar year shall be no less than the total
24 amount that was required to be paid during that year under
25 this subdivision.

1 "(4) DEATH OF MEMBER AFTER DISTRIBUTIONS BEGIN. If a
2 member dies after distribution of the member's interest begins
3 in the form of an annuity meeting the requirements of this
4 section, then the remaining portion of the member's interest
5 shall continue to be distributed over the remaining period
6 over which distributions commenced.

7 "(d) Requirements for annuity distributions that
8 commence during member's lifetime.

9 "(1) JOINT LIFE ANNUITIES WHERE THE BENEFICIARY IS
10 THE MEMBER'S SPOUSE. If distributions commence under a
11 distribution option that is in the form of a joint and
12 survivor annuity for the joint lives of the member and the
13 member's spouse, the minimum distribution incidental benefit
14 requirement shall not be satisfied as of the date
15 distributions commence unless, under the distribution option,
16 the periodic annuity payment payable to the survivor does not
17 at any time on and after the member's required beginning date
18 exceed the annuity payable to the member. In the case of an
19 annuity that provides for increasing payments, the requirement
20 of this subdivision shall not be violated merely because
21 benefit payments to the beneficiary increase, provided the
22 increase is determined in the same manner for the member and
23 the beneficiary. If the form of distribution combines a joint
24 and survivor annuity for the joint lives of the member and the
25 member's spouse and a period certain annuity, the preceding

1 requirements shall apply to annuity payments to be made to the
2 designated beneficiary after the expiration of the period
3 certain.

4 "(2) JOINT LIFE ANNUITIES WHERE THE BENEFICIARY IS
5 NOT THE MEMBER'S SPOUSE. If the member's interest is being
6 distributed in the form of a joint and survivor annuity for
7 the joint lives of the member and a beneficiary other than the
8 member's spouse, the minimum distribution incidental benefit
9 requirement shall not be satisfied as of the date
10 distributions commence unless under the distribution option,
11 the annuity payments to be made on and after the member's
12 required beginning date shall satisfy the conditions of this
13 subdivision. The periodic annuity payment payable to the
14 survivor shall not at any time on and after the member's
15 required beginning date exceed the applicable percentage of
16 the annuity payment payable to the member using the table set
17 forth in Treasury Regulation § 1.401(a)(9)-6, Q & A-2(c)(2).
18 The applicable percentage is based on the adjusted
19 member/beneficiary age difference. The adjusted
20 member/beneficiary age difference is determined by first
21 calculating the excess of the age of the member over the age
22 of the beneficiary based on their ages on their birthdays in a
23 calendar year. If the member is younger than age 70, the age
24 difference determined in the previous sentence is reduced by
25 the number of years that the member is younger than age 70 on

1 the member's birthday in the calendar year that contains the
2 annuity starting date. In the case of an annuity that provides
3 for increasing payments, the requirement of this subdivision
4 shall not be violated merely because benefit payments to the
5 beneficiary increase, provided the increase is determined in
6 the same manner for the member and the beneficiary. If the
7 form of distribution combines a joint and survivor annuity for
8 the joint lives of the member and a nonspouse beneficiary and
9 a period certain annuity, the preceding requirements shall
10 apply to annuity payments to be made to the designated
11 beneficiary after the expiration of the period certain.

12 "(3) PERIOD CERTAIN ANNUITIES. Unless the member's
13 spouse is the sole designated beneficiary and the form of
14 distribution is a period certain and no life annuity, the
15 period certain for an annuity distribution commencing during
16 the member's lifetime may not exceed the applicable
17 distribution period for the member under the Uniform Lifetime
18 Table set forth in Treasury Regulation § 1.401(a)(9)-9 for the
19 calendar year that contains the annuity starting date. If the
20 annuity starting date precedes the year in which the member
21 reaches age 70, the applicable distribution period for the
22 member is the distribution period for age 70 under the Uniform
23 Lifetime Table set forth in Treasury Regulation §
24 1.401(a)(9)-9 plus the excess of 70 over the age of the member
25 as of the member's birthday in the year that contains the

1 annuity starting date. If the member's spouse is the member's
2 sole designated beneficiary and the form of distribution is a
3 period certain and no life annuity, the period certain may not
4 exceed the longer of the member's applicable distribution
5 period, as determined under this subdivision, or the joint
6 life and last survivor expectancy of the member and the
7 member's spouse as determined under the Joint and Last
8 Survivor Table set forth in Treasury Regulation §
9 1.401(a)(9)-9, using the member's and spouse's attained ages
10 as of the member's and spouse's birthdays in the calendar year
11 that contains the annuity starting date.

12 "(e) Requirements for minimum distributions where
13 member dies before date distributions begin.

14 "(1) MEMBER SURVIVED BY DESIGNATED BENEFICIARY AND
15 LIFE EXPECTANCY RULE.

16 "At the election of the member or, if no election is
17 made by the member, then at the election of the member's
18 designated beneficiary, if the member dies before the date
19 distribution of his or her interest begins and there is a
20 designated beneficiary, the member's entire interest shall be
21 distributed, beginning no later than the time described in
22 paragraph a. or b. of subdivision (2) of subsection (b), over
23 the life of the designated beneficiary or over a period
24 certain not exceeding:

1 "a. Unless the annuity starting date is before the
2 first distribution calendar year, the life expectancy of the
3 designated beneficiary determined using the beneficiary's age
4 as of the beneficiary's birthday in the calendar year
5 immediately following the calendar year of the member's death;
6 or

7 "b. If the annuity starting date is before the first
8 distribution calendar year, the life expectancy of the
9 designated beneficiary determined using the beneficiary's age
10 as of the beneficiary's birthday in the calendar year that
11 contains the annuity starting date.

12 "(2) MEMBER SURVIVED BY DESIGNATED BENEFICIARY AND
13 FIVE-YEAR RULE. At the election of the member or, if no
14 election is made by the member, then at the election of the
15 member's designated beneficiary, if the member dies before
16 distributions begin and there is a designated beneficiary,
17 then the member's entire interest shall be distributed to the
18 designated beneficiary by December 31st of the calendar year
19 containing the fifth anniversary of the member's death. This
20 subdivision shall apply to all distributions.

21 "(3) NO DESIGNATED BENEFICIARY. If the member dies
22 before the date distributions begin and there is no designated
23 beneficiary as of September 30th of the year following the
24 year of the member's death, distribution of the member's
25 entire interest shall be completed by December 31st of the

1 calendar year containing the fifth anniversary of the member's
2 death.

3 "(4) DEATH OF SURVIVING SPOUSE BEFORE DISTRIBUTIONS
4 TO SURVIVING SPOUSE BEGIN. If the member dies before the date
5 distribution of his or her interest begins, the member's
6 surviving spouse is the member's sole designated beneficiary,
7 and the surviving spouse dies before distributions to the
8 surviving spouse begin, this subsection shall apply as if the
9 surviving spouse were the member, except that the time by
10 which distributions shall begin shall be determined without
11 regard to paragraph a. of subdivision (2) of subsection (b).

12 "(f) Definitions.

13 "(1) ACTUARIAL GAIN. The difference between an
14 amount determined using the actuarial assumptions, such as,
15 investment return, mortality, expense, and other similar
16 assumptions, used to calculate the initial payments before
17 adjustment for any increases and the amount determined under
18 the actual experience with respect to those factors. Actuarial
19 gain also includes differences between the amount determined
20 using actuarial assumptions when an annuity was purchased or
21 commenced and such amount determined using actuarial
22 assumptions used in calculating payments at the time the
23 actuarial gain is determined.

24 "(2) DESIGNATED BENEFICIARY. The individual who is
25 designated as the beneficiary under Section 45-37-123.103 and

1 is the designated beneficiary under § 401(a)(9), Internal
2 Revenue Code, and Treasury Regulation § 1.401(a)(9)-1, Q &
3 A-4.

4 "(3) DISTRIBUTION CALENDAR YEAR. A calendar year for
5 which a minimum distribution is required. For distributions
6 beginning before the member's death, the first distribution
7 calendar year is the calendar year immediately preceding the
8 calendar year which contains the member's required beginning
9 date. For distributions beginning after the member's death,
10 the first distribution calendar year is the calendar year in
11 which distributions are required to begin pursuant to
12 subsection (b).

13 "(4) ELIGIBLE COST-OF-LIVING INDEX. An index
14 described below:

15 "a. A consumer price index that is based on prices
16 of all items, or all items excluding food and energy, and
17 issued by the Bureau of Labor Statistics, including an index
18 for a specific population, such as urban consumers or urban
19 wage earners and clerical workers, and an index for a
20 geographic area or areas, such as a given metropolitan area or
21 state; or

22 "b. A percentage adjustment based on a
23 cost-of-living index described in paragraph a., or a fixed
24 percentage, if less. In any year when the cost-of-living index
25 is lower than the fixed percentage, the fixed percentage may

1 be treated as an increase in an eligible cost-of-living index,
2 provided it does not exceed the sum of:

3 "1. The cost-of-living index for that year; and

4 "2. The accumulated excess of the annual
5 cost-of-living index from each prior year over the fixed
6 annual percentage used in that year, reduced by any amount
7 previously utilized under this paragraph.

8 "c. A percentage adjustment based on the increase in
9 compensation for the position held by the member at the time
10 of retirement, and provided under the terms of the plan.

11 "(5) LIFE EXPECTANCY. The life expectancy as
12 computed by use of the Single Life Table in Treasury
13 Regulation § 1.401(a)(9)-9.

14 "(6) REQUIRED BEGINNING DATE. The April 1st of the
15 calendar year following the later of:

16 "a. The calendar year in which the member attains
17 age ~~70-1/2~~ 72; or

18 "b. The calendar year in which the member retires.

19 "§45-37-123.194.

20 "(a) Except as provided below and otherwise
21 specifically required by law, it shall be impossible by
22 operation of the plan or of the trust agreement, by
23 termination of either, by power of revocation or amendment, by
24 the happening of any contingency, by collateral arrangement,
25 or by any other means, for any part of the corpus or income of

1 any trust fund maintained pursuant to the plan or any funds
2 contributed thereto to be used for, or diverted to, purposes
3 other than the exclusive benefit of members, former members,
4 or their beneficiaries; and no funds of the system, whether in
5 cash, securities, or otherwise, nor any income or yield
6 thereof, shall be subject to or exacted on account of, any
7 tax; and no retirement or disability allowance or right to
8 return of contributions, or other benefits payable as set
9 forth in the plan, shall be assignable or be subject to
10 execution, levy, attachment, garnishment, or other legal
11 process. Accordingly, the plan shall not recognize any
12 domestic relations order attempting to provide a member's
13 benefits, or any portion thereof, to an alternate payee.

14 "(b) In the event that the county shall make an
15 excessive contribution under a mistake of fact, the pension
16 board, or its agent, may demand repayment of such excessive
17 contribution, and the trustees shall return such amount,
18 adjusted for any income or loss in value so long as such
19 amount is returned within one year of the date of the mistaken
20 contribution. Notwithstanding the immediately preceding
21 sentence, any ~~such~~ return shall be limited to an amount that,
22 in the judgment of the pension board, would not cause the
23 system to become actuarially unsound.

24 "(c) In the event that the plan makes an overpayment
25 to a member or beneficiary for any reason, such as,

1 miscalculation of a pension benefit or payment prior to the
2 time that the member or beneficiary was entitled to payment,
3 the pension board may elect to offset future pension payments
4 until such overpayment has been recouped by the trust fund.

5 ~~However, once a distribution has been made to a member or~~
6 ~~beneficiary, neither shall be allowed to voluntarily elect to~~
7 ~~repay the distribution to the plan.~~

8 "(d) Subject to applicable law, no person shall be
9 entitled to receive a deferred pension if his or her
10 separation from the service from the county is due to his or
11 her misappropriation of funds or property of the county, or to
12 moral delinquency on his or her part.

13 "(e) Subject to applicable law, if the board finds
14 that a member's service is terminated by resignation or
15 discharge, or otherwise, as a consequence of such member's
16 dishonesty in handling the monies or property of the county or
17 any department thereof, the member shall not be entitled to
18 any retirement or disability benefit, but he or she shall upon
19 application therefor be paid a refund of the full amount of
20 his or her employee contributions, less any benefits
21 previously paid to him or her.

22 "(f) Subject to applicable law, a member's or
23 beneficiary's benefit may be offset for obligations to the
24 county, the pension board, or the trust fund."

1 Section 2. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 3. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 13-APR-21.

Jeff Woodard
Clerk

Senate

06-MAY-21

Passed