

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 2160**

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

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Sponsors: Senator Garrou.

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Referred to: Pensions, Retirement & Aging.

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May 29, 2008

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE PROVISIONS OF THE WINSTON-SALEM FIREMEN'S  
2 RETIREMENT FUND.  
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4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Sections 1 through 32 of Chapter 388 of the 1973 Session  
6 Laws, as amended by Chapter 15 of the 1977 Session Laws, Chapter 284 of the 1979  
7 Session Laws, Chapter 647 of the 1981 Session Laws, Chapter 464 of the 1983 Session  
8 Laws, Chapter 508 of the 1987 Session Laws, Chapter 793 of the 1989 Session Laws,  
9 S.L. 1998-92, S.L. 2003-35, and S.L. 2006-121, read as rewritten:

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

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

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

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

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

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

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

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

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

42 **Sec. 6.** Any Trustee may resign at any time by giving notice in writing to the other  
43 Trustees. Should any Trustee who is a member of the Fire Department cease to be a  
44 member of the Fire Department for any reason, he shall automatically cease to be a

1 Trustee. With regard to any Trustee elected by the members of the Association who  
2 resigns or ceases to be a Trustee for any reason, his successor shall be elected as  
3 provided in Section 5 of this act. Should the Trustee who was appointed by the  
4 Insurance Commissioner of the State of North Carolina resign or cease to be a Trustee  
5 for any reason, his successor shall be appointed by the said Insurance Commissioner.  
6 Should any Trustee who is a retired member of the Fire Department resign or cease to  
7 be a Trustee for any reason, that Trustee's successor shall be appointed by the Trustees  
8 who are active members of the Fire Department as provided in Section 5 of this act.

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

21 **Sec. 8.** As of September 1, 2001, the secretary of the Association (or the  
22 secretary-treasurer if such offices shall be combined into a single office) shall be  
23 entitled to receive monthly compensation in an amount to be determined each year by  
24 the Trustees. The Trustees, as such, including the chairman and the vice-chairman, shall  
25 serve without compensation. The Trustees may authorize reimbursement by the  
26 Association to any officer or Trustee of the Association for all expenses incurred by  
27 such person in connection with services rendered in behalf of the Association.

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

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

43 **Sec. 10.** A special meeting of the Board of Trustees may be called by the chairman  
44 or vice-chairman, or by any two Trustees, upon 24 hours' written notice delivered in

1 person to the members of said Board or mailed to the last known address of each  
2 member of said Board. A majority of the Trustees in office shall constitute a quorum at  
3 any meeting and a majority vote of the Trustees at a meeting at which a quorum is  
4 present shall constitute action by the Trustees.

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

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

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

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

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

1 Winston-Salem Firemen's Relief Fund and the officers, members, boards and  
2 committees of said Fund, are also hereby relieved of any claim of any kind whatsoever  
3 which may be based on past, present or future service in the Winston-Salem Fire  
4 Department, if any, so long as any claimant is entitled to benefits or pension under the  
5 provisions of this act.

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

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

28 (2) If he shall have attained at least his 40th birthday on the date of  
29 transfer, but had not attained such birthday when last employed by the  
30 City, he may elect within 90 days following such transfer to become a  
31 member. If he elects to become a member, he shall contribute to the  
32 Association the amount he would have contributed if he had become a  
33 member on the day next preceding his 40th birthday. In addition, at the  
34 option of such employee, he may further elect to contribute such  
35 additional amount as he would have contributed prior to his 40th  
36 birthday if his employment with the City had been with the Fire  
37 Department. Any such contributions shall include interest at the rate of  
38 eight percent (8%), applicable to any payments made on and after July  
39 1, 1989, per annum, computed on the amount accrued as of the end of  
40 each fiscal year of the Association.

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

1           (4) The elections specified in subdivisions (1) and (2) hereof shall be  
2           made in writing to the Trustees within 90 days following such transfer,  
3           and shall be irrevocable when made (subject to termination of  
4           membership upon subsequent separation from employment with the  
5           Fire Department). Any contributions (and interest) payable pursuant to  
6           such election shall be paid in cash in a lump sum at the time such  
7           election shall be filed.

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

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

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

1 retirement shall be deemed to be a period of continuous employment with the Fire  
2 Department.

3 (e) If any member of the Association was employed by the Fire Department as a  
4 cadet, such member's number of years of employment as a cadet may be added to the  
5 period of his continuous employment with the City if, by July 31, 1981, such member  
6 contributed to the Association an amount equal to twelve dollars (\$12.00) per month for  
7 the time he was a cadet, plus interest at the rate of six percent (6%) per annum,  
8 computed on the amount accrued as of the end of each fiscal year of the Association.

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

25 (g) If an individual who is an active participant in the North Carolina Local  
26 Governmental Employees' Retirement System (the 'System') shall terminate service  
27 with the employer enabling the individual to participate in the System (the 'System  
28 Employer'), and shall immediately enter the employment of the Fire Department, he  
29 may elect to have his period of service under the System considered as continuous  
30 employment with the Fire Department for purposes of this act; provided, that such  
31 election shall be permitted only if the individual was under age 40 when he entered the  
32 employment of the System Employer. This election shall be made in writing to the  
33 Trustees within 90 days of the individual's commencement of employment with the Fire  
34 Department (or, with respect to an individual who becomes employed by the Fire  
35 Department prior to July 1, 1989, this election shall be made on or before September 30,  
36 1989). The election, if made, shall be accompanied by a cash contribution to the  
37 Association equal to the sum of (i) plus (ii) plus (iii), where (i) is the amount of twelve  
38 dollars (\$12.00) per month measured from the date of the person's hiring by the City  
39 until the earlier of the transfer and June 30, 1998; (ii) is the aggregate amount that the  
40 person would have contributed, determined in accordance with Section 17 of this act,  
41 measured from July 1, 1998, until the date of the transfer, if the transfer occurs on or  
42 after July 1, 1998; and (iii) is interest accrued at the rate of eight percent (8%) per  
43 annum, compounded annually on the amount accrued as of the end of each fiscal year of

1 the Association. The election shall be irrevocable when made. If the election is not  
2 made in a timely fashion, the right to make the election is forfeited.

3 **Sec. 17.** The Treasurer of the City shall make a deduction from the salary of each  
4 member of the Association due him by the City. As of September 1, 2001, the amount  
5 of each such deduction shall be determined as of the first day of each payroll period of  
6 the City, and shall be equal to the quotient (rounded up to the next whole dollar amount)  
7 obtained by dividing (i) the product, rounded to the nearest dollar, of .007 multiplied by  
8 the annual starting salary of a firefighter employed by the Fire Department in effect at  
9 the beginning of that payroll period; by (ii) the number of payroll periods in that fiscal  
10 year of the City. The amount so deducted shall be turned over as soon as practicable  
11 after the applicable payroll period by the said Treasurer to the custodian of the  
12 Association as hereinbefore provided, and the Association shall have the authority to  
13 accept donations from any and all sources whatsoever.

14 **Sec. 18.** If at any time there shall not be sufficient assets in the retirement fund of the  
15 Association to pay fully the persons entitled to benefits provided herein, such persons  
16 shall be paid such benefits on a pro rata basis to the extent the assets of such fund will  
17 allow, as shall be determined by the Trustees acting upon the advice of the  
18 Association's actuary. Effective on or after July 1, 1998, the Trustees shall obtain a  
19 written report from the Association's actuary as of July 1 of each year evenly divisible  
20 by two, or more frequently if the Trustees deem advisable, setting forth the present  
21 value of the assets of the fund and the present value of current liabilities of current  
22 retirees.

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



1 continuous employment with the City if such member contributes to the Association  
2 twelve dollars (\$12.00) for each month he was on such leave, plus interest at the rate of  
3 eight percent (8%), applicable to any payments made on and after July 1, 1989, per  
4 annum, computed on the amount accrued as of the end of each fiscal year of the  
5 Association.

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

22 Years of Employment at	Percentage of Normal
23 Retirement Date	Retirement Benefit
24 25	85%
25 26	88%
26 27	91%
27 28	94%
28 29	97%

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

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

40 Years of Employment at	Percentage of Normal
41 Retirement Date	Retirement Benefit
42 25	70%
43 26	76%
44 27	82%

1	28	88%
2	29	94%

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

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

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

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

Effective beginning July 1, 1989, and ending June 30, 1990, the monthly benefit of a member who retires as a disabled member (including a member who retired as a disabled member prior to July 1, 1989) shall equal eight dollars (\$8.00) times his years of service but in no event more than two hundred dollars (\$200.00) per month. Effective beginning July 1, 1990, and ending June 30, 1998, the monthly benefit of a member (including a member who retires as a disabled member prior to this date) shall equal eight dollars and sixty cents (\$8.60) times his years of service, but in no event more than two hundred fifteen dollars (\$215.00) per month. Effective on and after July 1, 1998, the monthly benefit of a member who retires as a disabled member, including a member who retires as a disabled member prior to July 1, 1998, shall equal eight dollars and twenty cents (\$8.20) times his years of service, but in no event more than two hundred

1 five dollars (\$205.00) per month. For this purpose only, years of service shall mean the  
2 number of his earned years of service in the employment of the City (as determined  
3 pursuant to Section 16(d) of this act). Payments shall be subject to the provisions of  
4 Section 18 of this act.

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

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

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

1 the recipient thereof less interest, if any, previously contributed to the Association by  
2 the member pursuant to Section 16 or Section 19.

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

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

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

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

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

41 **Sec. 28.** The provisions of this act shall be administered on an equitable and  
42 nondiscriminatory basis, it being the intent hereof that where the Trustees are given  
43 discretionary powers, such powers shall be exercised in an equitable manner and so as  
44 to prevent discrimination between persons similarly situated. All assets of the

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

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

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

17 (c) Notwithstanding any provision of the Association to the contrary, the  
18 maximum annual benefit payable in the form of a straight life annuity from the  
19 Association on behalf of a member, when combined with any benefits from another  
20 qualified retirement plan maintained by the Fire Department of the City of  
21 Winston-Salem, shall not exceed the amount permitted by section 415 of the Internal  
22 Revenue Code. ~~Code~~, the provisions of which are specifically incorporated by reference  
23 into this act.

24 (d) In addition to the other applicable limitations set forth in this act, and  
25 notwithstanding any other provision of this act to the contrary, for plan years beginning  
26 on or after January 1, 1996, the annual compensation of each member taken into  
27 account under this act shall not exceed the OBRA 1993 annual compensation limit. The  
28 OBRA 1993 annual compensation limit is one hundred fifty thousand dollars  
29 (\$150,000), as adjusted by the Commissioner for increase in the cost of living in  
30 accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost of living  
31 adjustment in effect for a calendar year applies to any period, not exceeding 12 months,  
32 over which compensation is determined (the "determination period") beginning in that  
33 calendar year. If a determination period consists of fewer than 12 months, the OBRA  
34 1993 annual compensation limit shall be multiplied by a fraction, the numerator of  
35 which is the number of months in the determination period, and the denominator of  
36 which is 12. If compensation for any prior determination period is taken into account in  
37 determining a member's benefits accruing in the current plan year, the compensation for  
38 that prior determination period is subject to the OBRA 1993 annual compensation limit  
39 in effect for that prior determination period. For this purpose, for determination periods  
40 beginning before the first day of the first plan year beginning on or after January 1,  
41 1996, the OBRA 1993 annual compensation limit is one hundred fifty thousand dollars  
42 (\$150,000). Effective for plan years beginning on or after January 1, 2002, the OBRA  
43 1993 annual compensation limit shall be two hundred thousand dollars (\$200,000), as

1 adjusted by the Commissioner for increases in the cost of living in accordance with  
2 section 401(a)(17(B) of the Internal Revenue Code.

3 (e) This subsection applies to distributions made on or after January 1, 2002.  
4 Notwithstanding any provision of this act to the contrary that would otherwise limit a  
5 distributee's election under this subsection, a distributee may elect, at the time and in the  
6 manner prescribed by the Trustees, to have any portion of an eligible rollover  
7 distribution paid directly to an eligible retirement plan specified by the distributee in a  
8 direct rollover. The following definitions shall apply for purposes of this subsection:

9 (1) Eligible rollover distribution. An eligible rollover distribution is any  
10 distribution of all or any portion of the balance to the credit of the  
11 distributee, except that an eligible rollover distribution does not  
12 include:

- 13 a. Any distribution that is one of a series of substantially equal  
14 periodic payments (not less frequently than annually) made for  
15 the life (or life expectancy) of the distributee or the joint lives  
16 (or joint life expectancies) of the distributee and the  
17 distributee's designated beneficiary, or for a specified period of  
18 10 years or more;
- 19 b. Any distribution to the extent such distribution is required under  
20 section 401(a)(9) of the Internal Revenue Code; or
- 21 c. Any ~~hardship~~ ~~distribution~~ ~~described~~ ~~in~~ ~~section~~  
22 ~~401(k)(2)(B)(i)(IV) of the Internal Revenue Code.~~ distribution  
23 that is made upon the hardship of the distributee.

24 Notwithstanding the foregoing, a portion of a distribution shall not fail  
25 to be an eligible rollover distribution merely because the portion  
26 consists of after-tax employee contributions that are not includible in  
27 gross income. However, such a portion may be transferred only to an  
28 individual retirement account or annuity described in section 408(a) or  
29 section 408(b) of the Internal Revenue Code, or to a qualified defined  
30 contribution plan described in section 401(a) or section 403(a) of the  
31 Internal Revenue Code that agrees to separately account for amounts  
32 so transferred, including separately accounting for the portion of that  
33 distribution that is includible in gross income and the portion of that  
34 distribution that is not so includible.

35 (2) Eligible retirement plan. An eligible retirement plan is an individual  
36 retirement account described in section 408(a) of the Internal Revenue  
37 Code, an individual retirement annuity described in section 408(b) of  
38 the Internal Revenue Code, or a qualified trust described in section  
39 401(a) of the Internal Revenue Code, that accepts the distributee's  
40 eligible rollover distribution. An eligible retirement plan shall also  
41 mean an annuity contract described in section 403(b) of the Internal  
42 Revenue Code and an eligible plan under section 457(b) of the Internal  
43 Revenue Code that is maintained by a state, a political subdivision of a  
44 state, or any agency or instrumentality of a state or a political

1 subdivision of a state, and that agrees to separately account for  
2 amounts transferred into that plan from the Association. The definition  
3 of eligible plan shall also apply in the case of a distribution to a  
4 surviving spouse, or to a spouse or former spouse who is the alternate  
5 payee under a qualified domestic relations order, as defined in section  
6 414(p) of the Internal Revenue Code. Effective January 1, 2008, an  
7 eligible retirement plan shall also mean a Roth IRA as described in  
8 section 408A of the Internal Revenue Code.

9 (3) Distributee. A distributee includes a member or former member of the  
10 Association. In addition, the surviving spouse of a member or former  
11 member is a distributee with regard to the interest of the member or  
12 former member.

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

15 (5) Rollovers by nonspouse beneficiaries. Notwithstanding anything in  
16 this subsection to the contrary, effective January 1, 2007, the benefits  
17 of nonspouse beneficiaries may be transferred in a direct rollover to an  
18 inherited individual retirement account or an inherited individual  
19 retirement annuity ("inherited IRA"). Once in the inherited IRA,  
20 distributions will be made in compliance with the minimum  
21 distribution rules of section 401(a)(9) of the Internal Revenue Code  
22 that apply following the death of a member.

23 **Sec. 28B. (a)** This section shall apply for purposes of determining required  
24 minimum distributions for calendar years beginning with the 2003 calendar year. The  
25 requirements of this section shall take precedence over any inconsistent provisions of  
26 the Association. All distributions required under this section shall be determined and  
27 made in accordance with the Treasury Regulations under section 401(a)(9) of the  
28 Internal Revenue Code, which are specifically incorporated by reference into this act.  
29 Notwithstanding the other provisions of this section, distributions may be made under a  
30 designation made before January 1, 1984, in accordance with section 242(b)(2) of the  
31 Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the  
32 Association that relate to section 242(b)(2) of TEFRA.

33 (b) Time and Manner of Distribution. –

34 (1) Required beginning date. – The member's entire interest will be  
35 distributed, or begin to be distributed, to the member no later than the  
36 member's required beginning date.

37 (2) Death of member before distributions begin. – If the member dies  
38 before distributions begin, the member's entire interest will be  
39 distributed, or begin to be distributed, no later than as follows:

40 a. If the member's surviving spouse is the member's sole  
41 designated beneficiary, as defined in section 28(e)(1), then  
42 distributions to the surviving spouse will begin by December 31  
43 of the calendar year immediately following the calendar year in  
44 which the member died, or by December 31 of the calendar

1                    year in which the member would have attained age 70 ½, if  
2                    later.

3                    b. If the member's surviving spouse is not the member's sole  
4                    designated beneficiary, then distributions to the designated  
5                    beneficiary will begin by December 31 of the calendar year  
6                    immediately following the calendar year in which the member  
7                    died.

8                    c. If there is no designated beneficiary as of September 30 of the  
9                    year following the year of the member's death, the member's  
10                   entire interest will be distributed by December 31 of the  
11                   calendar year containing the fifth anniversary of the member's  
12                   death.

13                   d. If the member's surviving spouse is the member's sole  
14                   designated beneficiary and the surviving spouse dies after the  
15                   member but before distributions to the surviving spouse begin,  
16                   the provisions of this subdivision, except for sub-subdivision a.  
17                   of this subdivision, will apply as if the surviving spouse were  
18                   the member.

19                   For purposes of this subdivision and of subsection (d) of this section,  
20                   distributions are considered to begin on the member's required  
21                   beginning date, or if sub-subdivision d. of this subdivision applies, the  
22                   date distributions are required to begin to the surviving spouse under  
23                   sub-subdivision a. of this subdivision. 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 distributions  
26                   are required to begin to the surviving spouse under sub-subdivision a.  
27                   of this subdivision, the date distributions are considered to begin is the  
28                   date distributions actually commence.

29                   (3) Forms of distribution. – Unless the member's interest is distributed in  
30                   the form of an annuity purchased from an insurance company or in a  
31                   single lump sum on or before the required beginning date, as of the  
32                   first distribution calendar year, as defined in subdivision (2) of  
33                   subsection (e) of this section, distributions will be made in accordance  
34                   with subsections (b), (c), and (d) of this section. If the member's  
35                   interest is distributed in the form of an annuity purchased from an  
36                   insurance company, distributions under that annuity shall be made in  
37                   accordance with the requirements of section 401(a)(9) of the Internal  
38                   Revenue Code and the Treasury Regulations.

39                   (b) Determination of Amount to be Distributed Each Year. –

40                   (1) General annuity requirements. – If the member's interest is paid in the  
41                   form of annuity distributions from the Association, payments under the  
42                   annuity will satisfy the following requirements:

43                   a. The annuity distributions shall be paid in periodic payments  
44                   made at intervals not longer than one year;



- 1           b. The distribution period shall be over a life, or lives, or over a  
2           period certain not longer than the period described in subsection  
3           (c) or (d) of this section;
- 4           c. Once payments have begun over a period certain, the period  
5           certain will not be changed even if the period certain is shorter  
6           than the maximum permitted;
- 7           d. Payments will either not increase or will increase only as  
8           follows:
- 9                1. By an annual percentage increase that does not exceed  
10               the annual percentage increase in an eligible  
11               cost-of-living index, as defined in subdivision (3) of  
12               subsection (e) of this section, for a 12-month period  
13               ending in the year during which the increase occurs or  
14               the prior year;
- 15                2. By a percentage increase that occurs at specified times  
16               and does not exceed the cumulative total of annual  
17               percentage increases in an eligible cost-of-living index  
18               since the annuity starting date, or if later, the date of the  
19               most recent percentage increase. However, in cases  
20               providing such a cumulative increase, an actuarial  
21               increase may not be provided to reflect the fact that  
22               increases were not provided in the interim years;
- 23                3. To the extent of the reduction in the amount of the  
24               member's payments to provide for a survivor benefit  
25               upon death, but only if the beneficiary whose life was  
26               being used to determine the distribution period described  
27               in subsection (c) of this section dies or is no longer the  
28               member's beneficiary pursuant to a qualified domestic  
29               relations order within the meaning of section 414(c) of  
30               the Internal Revenue Code.
- 31                4. To pay increased benefits that result from an amendment  
32               to the Association; or
- 33                5. To allow a beneficiary to convert the survivor portion of  
34               a joint and survivor annuity into a single sum distribution  
35               upon the member's death.
- 36           (2) Amount required to be distributed by required beginning date. – The  
37           amount that must be distributed on or before the member's required  
38           beginning date, or if the member dies before distributions begin, the  
39           date distributions are required to begin under sub-subdivisions a. or b.  
40           of subdivision (2) of subsection (a) of this section is the payment that  
41           is required for one payment interval. The second payment need not be  
42           made until the end of the next payment interval even if that payment  
43           interval ends in the next calendar year. Payment intervals are the  
44           periods for which payments are received, such as bimonthly, monthly,

1                    semiannually, or annually. All of the member's benefit accruals as of  
2                    the last day of the first distribution calendar year shall be included in  
3                    the calculation of the amount of the annuity payments for payment  
4                    intervals ending on or after the member's required beginning date.

5                    (3) Additional accruals after first distribution calendar year. – Any  
6                    additional benefits accruing to the member in a calendar year after the  
7                    first distribution calendar shall be distributed beginning with the first  
8                    payment interval ending in the calendar year immediately following  
9                    the calendar year in which such amount accrues.

10                  (c) Requirements for Annuity Distributions that Commence during Member's  
11 Lifetime. –

12                  (1) Joint life annuities where the beneficiary is not the member's spouse. –  
13                  If the member's interest is being distributed in the form of a joint and  
14                  survivor annuity for the joint lives of the member and a nonspouse  
15                  beneficiary, annuity payments to be made on or after the member's  
16                  required beginning date to the designated beneficiary after the  
17                  member's death must not at any time exceed the applicable percentage  
18                  of the annuity payment for that period that would have been payable to  
19                  the member using the table set forth in Q&A-2 of section 1.401(a)(9)-6  
20                  of the Treasury Regulations. The applicable percentage is based upon  
21                  the adjusted age difference between the member and the beneficiary.  
22                  The adjusted age difference between the member and the beneficiary is  
23                  determined by first calculating the excess of the age of the member  
24                  over the age of the beneficiary based upon their ages on their birthdays  
25                  in a calendar year. Then, if the member is younger than age 70, the age  
26                  difference determined in the previous sentence is reduced by the  
27                  number of years that the member is younger than age 70 on the  
28                  member's birthday in the calendar year that contains the annuity  
29                  starting date. If the form of distribution combines a joint and survivor  
30                  annuity for the joint lives of the member and a nonspouse beneficiary  
31                  and a period certain annuity, the requirement in the preceding sentence  
32                  shall apply to annuity payments to be made to the designated  
33                  beneficiary after the expiration of the period certain.

34                  (2) Period certain annuities. – Unless the member's spouse is the sole  
35                  designated beneficiary and the form of distribution is a period certain  
36                  and no life annuity, the period certain for an annuity distribution  
37                  commencing during the member's lifetime may not exceed the  
38                  applicable distribution period for the member under the Uniform  
39                  Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury  
40                  Regulations for the calendar year that contains the annuity starting  
41                  date. If the annuity starting date precedes the year in which the  
42                  member reaches age 70, the applicable distribution period for the  
43                  member is the distribution period for age 70 under the Uniform  
44                  Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury

1 Regulations plus the excess of 70 over the age of the member as of the  
2 member's birthday in the year that contains the annuity starting date. If  
3 the member's spouse is the member's sole designated beneficiary and  
4 the form of distribution is a period certain and no life annuity, the  
5 period certain may not exceed the longer of the member's applicable  
6 distribution period, as determined under subsection (b) of this section,  
7 or the joint life and last survivor expectancy of the member and the  
8 member's spouse as determined under the Joint and Last Survivor  
9 Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations,  
10 using the member's and spouse's attained ages as of the member's and  
11 spouse's birthdays in the calendar year that contains the annuity  
12 starting date.

13 (d) Requirements for Minimum Distributions where Member Dies before Date  
14 Distributions Begin –

15 (1) Member survived by designated beneficiary. – If the member dies  
16 before the date distribution of the member's interest begins and there is  
17 a designated beneficiary, the member's entire interest will be  
18 distributed, beginning no later than the time described in  
19 sub-subdivision a. or b. of subdivision (2) of subsection (a) of this  
20 section, over the life of the designated beneficiary or over a period  
21 certain not exceeding:

22 a. Unless the annuity starting date is before the first distribution  
23 calendar year, the life expectancy, as defined in subdivision (4)  
24 of subsection (e) of this section, of the designated beneficiary  
25 determined using the beneficiary's age as of the beneficiary's  
26 birthday in the calendar year immediately following the  
27 calendar year of the member's death; or  
28 b. If the annuity starting date is before the first distribution  
29 calendar year, the life expectancy of the designated beneficiary  
30 determined using the beneficiary's age as of the beneficiary's  
31 birthday in the calendar year that contains the annuity starting  
32 date.

33 (2) No designated beneficiary. – If the member dies before the date  
34 distributions begin and there is no designated beneficiary as of  
35 September 30 of the year following the year of the member's death,  
36 distribution of the member's entire interest will be completed by  
37 December 31 of the calendar year containing the fifth anniversary of  
38 the member's death.

39 (3) Death of surviving spouse before distributions to surviving spouse  
40 begin. – If the member dies before the date distribution of the  
41 member's interest begins, the member's surviving spouse is the  
42 member's sole designated beneficiary, and the surviving spouse dies  
43 before distributions to the surviving spouse begin, this subsection will  
44 apply as if the surviving spouse were the member, except that the time

1 by which distributions must begin will be determined without regard to  
2 subdivision (1) of subsection (a) of this section.

3 (e) Definitions. –

4 (1) Designated beneficiary. – The individual who is designated as the  
5 beneficiary under the Association in accordance with section 401(a)(9)  
6 of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4 of the  
7 Treasury Regulations.

8 (2) Distribution calendar year. – A calendar year for which a minimum  
9 distribution is required. For distributions beginning before the  
10 member's death, the first distribution calendar year is the calendar year  
11 immediately preceding the calendar year that contains the member's  
12 required beginning date. For distributions beginning after the  
13 member's death, the first distribution date is the calendar year in which  
14 distributions are required to begin pursuant to subsection (a) of this  
15 section.

16 (3) Eligible cost-of-living index. – One of the following:

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

23 b. A percentage adjustment based on a cost-of-living index  
24 described in sub-subdivision a. of this subdivision, or a fixed  
25 percentage if less. In any year in which the cost-of-living index  
26 is lower than the fixed percentage, the fixed percentage may be  
27 treated as an increase in an eligible cost-of-living index,  
28 provided it does not exceed the sum of:

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

30 2. The accumulated excess if the annual cost-of-living  
31 index from each prior year over the fixed annual  
32 percentage used in that year, reduced by any amount  
33 previously used under this sub-subdivision.

34 c. A percentage adjustment based on the increase in compensation  
35 for the position held by the member at the time of retirement,  
36 and provided under either the terms of a governmental plan  
37 within the meaning of section 414(d) of the Internal Revenue  
38 Code or under the terms of a nongovernmental plan in effect on  
39 April 17, 2002.

40 (4) Life expectancy. – Life expectancy as computed by use of the Single  
41 Life Table in section 1. 401(a)(9)-9 of the Treasury Regulations.

42 (5) Required beginning date. – April 1 of the calendar year following the  
43 later of (i) the calendar year in which the member attains age 70 ½; or  
44 (ii) the calendar year in which the member retires. Notwithstanding the

1                   foregoing, the required beginning date of a member who is a five  
2                   percent (5%) owner, as defined in section 416 of the Internal Revenue  
3                   Code, shall be April 1 of the calendar year following the calendar year  
4                   in which the member attains age 70 ½. In the event that, as of the  
5                   required beginning date, the amount of the payment to commence  
6                   cannot be determined or the recipient of the payment cannot be located  
7                   after a reasonable effort has been made to locate the recipient,  
8                   payments retroactive to the required beginning date shall be made  
9                   within 60 days after the amount has been determined or the recipient  
10                   has been located, whichever is applicable.

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

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

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

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

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

23           **SECTION 3.** This act becomes effective July 1, 2008.