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# Retirement Benefits

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# Retirement Benefits

## Private Acts of 1961 Chapter 381

**COMPILER'S NOTE:** Private Acts of 1961, Chapter 381, amended Private Acts of 1943, Chapter 274, by rewriting the entire body of the act.

**SECTION 1.** That the caption of Chapter 274 of the Private Acts of 1943, as amended, which caption is set forth in the caption hereof, is hereby amended by inserting after the phrase "and to define its powers and duties," the following "to coordinate said system with the Federal Social Security program, to authorize two divisions of the system with provisions applicable there to, and to prescribe penalties and punishment for any violations of the terms of this Act,"

**SECTION 2.** That Chapter 274 of the Private Acts of 1943, as amended, the caption of which is set out in the caption of this Act, be and the same is hereby amended by striking out all of said Act following the caption, as hereby amended, and substituting in lieu thereof, the following:

### ARTICLE 1.

#### GENERAL PROVISIONS.

**"SECTION 1.01** Definitions. That as used in this Act, the following words and phrases shall have the meaning indicated unless otherwise defined or required by the context:

(a) System shall mean the Davidson County Pension System created by this Act.

(b) Employer shall mean Davidson County. Any department of Davidson County, other than the Department of Education, or any board of Davidson County, other than the Board of Education, shall be deemed to be Davidson County for the purpose of this Act.

(c) Employee shall mean any person who is regularly employed by the Employer; any person who is an official of the Employer and who is elected by popular vote or by the Davidson County Quarterly Court; any person who is regularly employed in the service of the Employer by an elected official of the Employer; and any person who is regularly employed in the service of the Employer and who is appointed by an elected official of the Employer. In all cases of doubt, the Pension Commission shall determine whether or not a person is an "Employee" as defined herein.

(d) Member shall mean either a Member of Davidson (sic) A or a Member of Davidson B.

(e) Member of Division A shall mean any Employee who becomes a Member of Division A as provided in Article 2 of this Act.

(f) Member of Division B shall mean any Employee who becomes a Member of Division B as provided in Article 3 of this Act.

(g) Retired Member shall mean any person who is no longer an Employee and is receiving a benefit provided by this Act, or any Act amendatory thereof.

(h) Fund shall mean the Davidson County Pension fund created by this Act which shall consist of all assets of the System.

(i) Fiscal Year shall mean the fiscal year of the employer.

(j) Pension Commission, or Commission shall mean the Pension Commission established by this Act which shall administer (sic) the System in accordance with the provisions of this Act.

(k) Effective Date shall mean July 1, 1961, which shall be the effective date of this Act.

(l) Earnings shall mean the total compensation paid to an Employee for his personal services rendered to the Employer, excluding overtime payments, fees of office paid to an Employee who is not elected by popular vote or by the Davidson County Quarterly Court, compensation paid to members of boards or commissions of the Employer for personal services rendered as members of such boards or commissions, prerequisites (sic), or other compensation not a part of the set scale for an established normal working period; provided however, that any compensation paid by the State of Tennessee or the Employer upon which benefits under the Tennessee State Retirement System or any other retirement system, other than this System, are based shall be excluded from "Earnings" as defined herein.

(m) Service shall mean years and completed calendar months of service of an Employee of the Employer.

**"SECTION 1.02.** Introduction. That there is created and established, as of the Effective Date of this Act, a pension system for Employees of Davidson County to be known as the "Davidson County Pension System." All transactions by the Davidson County Pension System shall be in the name of the System.

The System shall have all the powers and privileges of a corporation, and the System shall function as hereinafter provided. All benefits payable to Retired Members and their Survivors under Chapter 274 of the Private Acts of 1943, and all amendatory Acts thereof, shall continue unimpaired, and such benefits shall be an obligation and liability of this System, subject to the provisions of this Act. All funds held by the Davidson County Trustee in connection with Chapter 274 of the Private Acts of 1943, and all amendatory Acts thereof, shall be deposited in the Fund established by this Act and be administered in accordance with (sic) the provisions of this Act.

The Davidson County Pension System provides for two (2) classifications of membership: Division A and Division B. Division A, set forth in Article 2 of this Act, shall cover Employees who have not been covered, prior to Effective Date of this Act, by any pension plan of the Employer; all persons who become Employees after the Effective Date of this Act; and Employees who are Members of Division B, as provided in this Act, and who voluntarily elect to transfer their membership to Division A in accordance with the provisions of this Act. Division B, set forth in Article 3 of this Act, shall cover persons who are Employees on the Effective Date of this Act and who were covered by the Davidson County Employees' Pension and Insurance Fund as it existed on the day before the Effective Date of this Act. Article 1 of this Act shall apply to Members of Division A and Members of Division B. Article 2 of this Act shall apply to Members of Division A. No Employee shall be a member of both Division A and Division B, notwithstanding anything in this Act to the contrary. Any benefit payable to a Retired Member in accordance with the provisions of this Act shall not be payable during any period of time he becomes or is an Employee, notwithstanding anything in this Act to the contrary.

**"SECTION 1.03.** Composition and Organization of Pension Commission. That the Pension Commission shall consist of the Davidson County Judge, the Davidson County Trustee, and the Davidson County Court Clerk. The Davidson County Judge shall be chairman of the Commission, and the Davidson County Court Clerk shall be secretary of the Commission. A majority of the members of the Commission shall constitute a quorum, and all action taken by the Commission shall be by affirmative vote of the majority of all members of the Commission. The Pension Commission shall meet at least once in each quarter of each calendar year, and the Commission may meet in special session upon call by any member of the Commission. Any two (2) members of the Commission shall execute any certificate, statement, or written direction on behalf of the Commission, and any person interested in the System shall be entitled to rely upon such execution as being an action of the Commission.

**"SECTION 1.04.** Duties and Powers of Pension Commission. That the Commission shall have complete control of the administrative of the System, subject to the provisions of this Act, with all powers necessary to enable it properly to carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the Commission shall have the power, not inconsistent with the provisions of this Act, to construe this Act and to determine all questions that may arise hereunder, including questions relating to eligibility of Employees to become Members and the amount of benefit to which any Member, Beneficiary, Survivor or Contingent Annuitant may become entitled hereunder. The decisions of the Commission upon all matters within the scope of its authority shall be final. The Commission shall establish rules and procedures to be followed by Members, Beneficiaries, Survivors and Contingent Annuitants in filing applications for benefits, in furnishing and verifying proofs necessary to determine age, Earnings, or in any other matters required to administer the System.

The Commission shall receive all applications for benefits. Upon receipt by the Commission of such an application, it shall determine all facts which are necessary to establish the right of the applicant to benefits under the pro-visions of the System and the amount thereof as provided in this Act. Upon request, the Commission will afford any applicant the right of a hearing with respect to any findings of fact or determination. The Commission, as it sees fit, shall prepare from time to time information concerning the System and distribute such information to Employees and Members. The Commission shall prepare and publish an annual financial report showing all receipts, disbursements, assets and liabilities of the System. All proceedings and records of the Commission shall be open for inspection by the public.

To enable the Commission to perform its functions, the Employee shall supply full and timely information to the Commission on all matters relating to the Earnings of Members, their length of Service, their retirement or other causes of termination of employment, contributions to the Fund by Members, and such other pertinent facts as the Commission may require.

The Commission shall certify to the Davidson County Trustee the signatures of all members of the Commission. The Davidson County Trustee shall be entitled to rely on the last received such certification of signatures until written notice to the contrary from the Commission has been received by the Davidson County Trustee.

The Commission shall be empowered to employ the services of legal counsel, investment consultants, actuarial (sic) consultants, and the services of others which, in the sole discretion of the Commission, may

be necessary to maintain a soundly designed, administered and financed pension system. All expenses incurred by or on behalf of the Pension Commission in the administration of the System during each Fiscal Year shall be paid from the Fund upon receipt by the Davidson County Trustee of written authorization by the Pension Commission. Members of the Commission shall serve without compensation as members of the Commission, but members of the Commission shall be reimbursed for the actual expenses incurred by them in the performance of their duties.

As soon as practicable after the Effective Date, the Commission shall adopt such actuarial (sic) and other tables as are necessary for the administration of the System. An annual actuarial (sic) valuation shall be made to determine the contingent assets, contingent liabilities and funding requirements of the System. At least once in each five (5) year period, the Commission shall cause an actuarial (sic) investigation to be made of the experience under the System. The Commission shall adopt from time to time, as it sees fit, new actuarial (sic) and other tables necessary for the administration of the System.

The Commission shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by any consultant or actuary; all opinions given by the any legal counsel selected or approved by the Commission; and any advice of a qualified investment consultant. The Commission shall be fully protected with respect to any action taken or suffered by the Commission in good faith in reliance upon the advice or opinion of any such consultant, actuary, legal counsel, or investment consultant, and all actions so taken or suffered shall be conclusive upon each of them and upon all Members of other persons interested in the System.

The Commission shall have no power in any way to modify, alter, add to or subtract from any provision of this Act.

The Pension Commission shall be authorized and empowered to do all things and to take all actions necessary to meet all requirements of Section 218 (d) of the Social Security Act in order to effect retroactive coverage to January 1, 1956 for Members of Division B who voluntarily elect to become covered by the Social Security Act and to transfer their coverage to Division A as provided in Article 3. The Employer shall be authorized and empowered to negotiate coverage; and the Employer shall act in accordance with the directions of the Commission in all matters relating to any agreements or modifications of any existing agreement which may be necessary to accomplish such retroactive coverage and which shall be executed by the Employer on or before December 31, 1961. The Commission shall be authorized and empowered to pay from the Fund to the Social Security Administration the amount of any retroactive Social Security taxes as required by such agreement or agreements or modifications of any existing agreements.

The Commission shall determine whether any Employee meets the health examination requirements an Employee must meet to become eligible for participation as provided in Section 2.03 or Section 2.05; and the Commission shall determine all questions relating to the disability of any Member applying for disability benefits under this Act. The Commission shall employ from time to time, upon such terms and conditions as the Commission may prescribe, one or more physicians who are not Members of the System. The duties of such physician or physicians shall be to perform all medical examinations required by the Commission, and to investigate all health and medical statements and certificates made by or on behalf of any Employee applying for membership in the System or any Member applying for or receiving disability benefits under this Act. The conclusions and recommendations on all matters submitted to such physician or physicians shall be reported in writing to the Commission; provided, however, the Commission shall not be bound by the conclusions and recommendations of such physician or physicians.

The Pension Commission shall be the trustee of the Fund and shall have the power to invest and reinvest the principal and income of the Fund, subject to the limitation that no investment shall be made except in securities and properties which at the time of making the investment are permitted by statute for the investment of funds by fiduciaries in the State of Tennessee. Subject to such limitations, the Pension Commission shall have full power to hold, purchase, sell, assign, transfer, or dispose of any assets of the Fund.

**SECTION 1.05. Personal Interest of Members of Pension Commission Prohibited.**

That no member of the Pension Commission shall have any interest, direct or indirect, in the gains or profits of any investment made by the Commission, except to the extent any member of the Commission may be a Member, Survivor, or Beneficiary of the System. No member of the Commission shall receive, directly or indirectly, any pay or emolument for his services except as expressly provided in this Act. No member of the Commission shall, directly or indirectly, for himself or as an agent, use in any manner the funds or deposits of the System, except to make such payments therefrom as are authorized by the Commission, nor shall any member of the Commission become an endorser or surety or in any manner or obligor for monies loaned or borrowed from the System.

**"SECTION 1.06.** Payments from Fund. That the Davidson County Trustee shall be the custodian of the Fund. All registered securities of the Fund shall be registered in the name of the Davidson County Pension System; every change in registration, by reason of sale or assignment of such securities, shall be accomplished by the authorized signatures of members of the Pension Commission; and such securities shall be delivered by the Davidson County Trustee when directed in writing by the Pension Commission. All payments from the Fund shall be made on authority of the Pension Committee. For the purpose of making payments from the Fund, there may be kept available sufficient cash on deposit to the credit of the System in one (1) or more banks or trust companies located in Davidson County, organized under the laws of Tennessee or of the United States, and qualified as State depositories.

**"SECTION 1.07.** Members' Contribution Account. That the Members' Contribution Account shall be the account to which all Members' contributions, as provided in this Act, shall be credited. From this account shall be paid any refund of contributions to a Member terminating his Service other than by retirement or death; and at the time a Member retires or dies, his account balance shall be transferred to the Retirement Allowance Account as defined in Section 1.08. Contributions by a Member shall be deducted from his Earnings for each payroll period subsequent to his becoming a Member; and the amount so deducted shall be deposited in the Fund by the Davidson County Trustee and credited to the Member's individual account of the Members' Contribution Account. Contributions by Members provided for in this Act shall be made notwithstanding that the minimum compensation provided by law for any Member shall be reduced thereby. Every member shall be deemed to consent and agree to the payroll deductions made as provided in this Act; and payment of salaries or wages, less such deductions, shall be a full and complete discharge of all claims for services rendered by such Members during the period covered by such payment.

In the case of a Member of Division B who voluntarily elects to transfer his membership to Division A in accordance with the provisions of this Act, an amount equal to the required taxes under the Federal Insurance Contributions Act payable by such Member of Division B for the period beginning January 1, 1956, and ending on the date coverage under the Social Security Act is extended to such Member of Division B shall be deducted from amounts credited to his individual account of the Members' Contribution Account.

**"SECTION 1.08.** Retirement Allowance Account. That the Retirement Allowance Account shall be the account in which all Employer contributions, all amounts transferred from the Members' Contributions Account, and all income from the invested assets of the Fund shall be accumulated. From this account shall be paid the expense of the Pension Commission in administering the System, death benefits, retirement benefits, and any other benefits payable after a Member's retirement or death.

**"SECTION 1.09.** Employer Contributions. That the Employer shall contribute monthly to the Fund an amount equal to a certain percentage of the monthly Earnings of Members of Division A and Members of Division B, based on a rate to be known as the Employer Contribution Rate. The employer Contribution Rate applicable for any Fiscal Year shall be established by the Pension Commission prior to the commencement of such Fiscal Year on the basis of an actuarial valuation of the System made as of a valuation date within three (3) years of the beginning of such Fiscal Year. The Employer Contribution Rate shall be determined actuarially based on a normal contribution rate and five per cent (5%) of unfunded past service liabilities as of the date an actuarial valuation is made.

The normal contribution rate and unfunded past service liabilities shall be determined by a qualified actuary on the basis of such actuarial assumptions last adopted by the Pension Commission prior to said actuarial valuation date and on the basis of accepted actuarial methods. Based on the Employer Contribution Rate, the Pension Commission shall determine (sic) its best estimate of the contribution required by the Employer for the Fiscal Year then beginning and of estimated expenses of the Pension Commission. Such estimated amounts shall be included in the budget of the Employer for such Fiscal Year, and the Employer shall make actual Employer contributions to the Fund each month based on the Employer Contribution Rate applicable to Earnings of the Members in the Month.

**"SECTION 1.10.** Correction of Errors. That if any change in records or error results in any Member, Survivor, Contingent Annuitant, or Beneficiary receiving from the System more or less than he would have been entitled to receive had the records been correct or had the error not been made, the Commission, upon discovery of such error, shall correct the error by adjusting, as far as practicable, the payments in such manner that the benefits to which the Member, Survivor, Contingent Annuitant, or Beneficiary was correctly entitled shall be paid. If any change in records or error results in any Member or the Employer contributing to the Fund more or less than should have been contributed had the records been correct or had the error not been made, the Commission, upon discovery of such error, shall correct the error by adjusting, as far as practicable, the contribution payable by the Member or the Employer so that the total contributions paid will equal the amount payable had the records been correct or had the error not been made.

**"SECTION 1.11.** Retirement Benefits Exempt From Taxation, Execution or Assignment. That all retirement benefits and other benefits accrued or accruing to any person under the provisions of this Act, and the contributions by Members as well as the Employer, and other assets of the Fund are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment, or any other process whatsoever, nor shall any assignment thereof be enforceable in any court.

**"SECTION 1.12.** False Statements. That any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the System, in any attempt to defraud the System shall be guilty of a misdemeanor and upon conviction thereof shall be punished accordingly.

**"SECTION 1.13.** Headings. That the headings and sub-headings of this Act have been inserted for convenience of reference only and are to be ignored in any construction of the provisions of this Act.

**"SECTION 1.14.** Construction. That in the construction of this Act, the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

**"SECTION 1.15.** Legally Incompetent. That if any Member, Retired Member, Survivor, Beneficiary or Contingent Annuitant is a minor, or is in the judgment of the Pension Commission otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the Commission may, unless and until claim shall have been made by a duly appointed guardian or conservator of such person, direct that such payment or any part thereof be made to such person's spouse, child, parent, brother, or sister, deemed by the commission to have incurred expenses for or assumed responsibility for the expense of such person. Any payment so made shall be a complete discharge of any liability under the System for such payment.

**"SECTION 1.16.** Amendment or Repeal. That an amendment or repeal of any provision of this Act shall be made only following an actuarial determination of its effect on the soundness of the System's design as well as its effect on the cost of the System, and disclosure of such information to all interested persons. No amendment or repeal of a provision of this Act shall affect in any way the benefits then being paid to Members, Survivors, Contingent Annuitants or Beneficiaries or benefits based on Service completed prior to the date of such amendment or repeal, except as provided in Section 1.17; provided, however, that in determining such accrued benefits payable to Members of Division A, the Average Base Earnings and the Average Excess Earnings shall be determined as of the date of the amendment or repeal, as the case may be, and in determining such accrued benefits payable to Members of Division B, the Credited Earnings shall be determined as of the date of the amendment or repeal, as the case may be.

**"SECTION 1.17.** Repeal of Entire Act. That in even of repeal of this Act in its entirety including amendatory Acts thereto, the Pension Commission shall prepare a list of all Members, Retired Members, Survivors, Contingent Annuitants and Beneficiaries, showing for each, as of the date of such repeal, the following:

- (1) For each Retired Member, Survivor, Beneficiary or Contingent Annuitant receiving benefits, the amount and terms of payment of such benefits.
- (2) For each Member of Division A entitled to a deferred benefit as provided in Section 2.16 or Section 2.55, the amount and terms of payment of such benefit; and for each terminated Member of Division B entitled to a deferred benefit as provided in Section 3.15 (c) (2), the amounts and terms of payment of such benefit.
- (3) For each Member of Division B, the amount of his accrued benefit computed as of the date of such repeal in the same manner as set forth in Section 3.10; and for each Member of Division A, the amount of his accrued benefit computed as of the date of repeal in the same manner as set forth in Section 2.12.

The terms of payment of such benefit for a Member of Division A shall be the same as those of the deferred benefit described in Section 2.16 or Section 2.25, unless modified by a previous election of an option as provided in Section 2.26.

The benefits shown on the above list will then be separated into "priority classes" as follows:

Priority Class A: Benefits for Members who have reached their sixty-fifth birthdays, benefits for Retired Members who have reached their sixty-fifth birthdays, and benefits for Survivors, Beneficiaries and Contingent Annuitants of all deceased Members or Retired Members.

Priority Class B: Benefits for Members, Retired Members who are receiving benefits, terminated Members of Division B entitled to a deferred benefit as provided in Section 3.15 (c) (2), and Members of Division A entitled to a deferred benefit as provided in Section 2.16 or Section 2.25; provided, however, that they have reached their fifty-fifth but not their sixty-fifth birthdays and have completed twenty (20) years of Credited Service.

Priority Class C: Benefits for all Members, terminated Members and Retired Members the Commission will then arrange for the liquidation of all assets held in the Fund maintained in Connection with the System and prepare a statement of the liquidated value of such assets. The Commission will then arrange for the application of the assets of the Fund to purchase annuities from an insurance company or companies, to provide in full, if such assets are sufficient to do so, the benefits in Priority Class A. If such assets are not sufficient to purchase one hundred percent (100%) of benefits in Priority Class A, they shall be applied in full to purchase such uniform percentage as can be purchased. If the assets of the Fund are more than sufficient to purchase one hundred percent (100%) of the benefits in Priority Class A, the remainder shall be applied in the same manner to purchase all or a uniform percentage of benefits in Priority Class B. If the remaining assets are more than sufficient to purchase one hundred Percent (100%) of the benefits in Priority Class B, the remainder shall be applied in the same manner to purchase all or a uniform percentage of benefits in Priority Class C. If the remaining assets are more than sufficient to purchase one hundred percent (100%) of the benefits in Priority Class C, the remainder shall revert to the Employer. Upon completion of the steps specified above, this Act shall be considered repealed, and no Member, Retired Member, Survivor, Beneficiary or Contingent Annuitant shall have any further right or claim under this Act.

**"SECTION 1.18.** Termination of System by Default. That in the event the Employer fails for four (4) consecutive Fiscal Years to contribute in accordance with the provisions of Section 1.09, the System shall automatically terminate and the provisions of Section 1.17 shall apply in the same manner as though the Act in its entirety had been repealed.

**"SECTION 1.19.** Right of Employment. That nothing contained in this Act shall be deemed to give any Member or Employee the right to be retained in the employment of the Employer or to interfere with the right of the Employer to discharge any Member or Employee, regardless of the effect which such discharge would have upon him as a Member.

## **ARTICLE 2**

### **DIVISION A**

**"SECTION 2.01.** Introduction. That Article 2 shall apply only to Employees eligible to participate in Division A and to Members of Division A as provided in Article 2. Article 2 shall not apply to Employees who are Members of Division B. Members of Division A shall be covered by the Social Security Act.

**"SECTION 2.02.** Definitions. That when used in Article 2, and in Article 1, the following words and phrases shall have the meaning indicated unless otherwise defined or required by the context:

- (a) Prior Service shall mean all Service, whether continuous or not, prior to the Effective Date; provided, however, that any person who becomes an Employee after the Effective Date shall not be allowed credit for Prior Service.
- (b) Current Service shall mean all continuous, uninterrupted Service after the Effective Date and prior to the date as of which Current Service is being determined; provided, however, after he has reached his seventieth birthday. Current Service shall not be deemed to be interrupted, but shall not include extended sick leave or leave of absence granted by the appointing officer of the Employee and approved by the Pension Commission, or any service, voluntary or involuntary, in the Armed Forces of the United States, provided the Employee is entitled to re-employment under the provisions of the Universal Military Training and Service Act and amendments thereto, or any law applicable to such re-employment, and provided further that the Employee shall apply for re-employment with the Employer within the time specified by law and in the manner and under the conditions prescribed by law.
- (c) Credited Service shall mean the sum of Prior Service, in any, and Current Service. Credited Service shall be expressed in years and a decimal fraction of a year based on completed calendar months.
- (d) Base Earnings shall mean that part of Earnings in any calendar year which is subject to Social Security Tax.
- (e) Excess Earnings shall mean that part of Earnings in any calendar year which is not subject to Social Security Tax.
- (f) Average shall mean an arithmetic average determined for the full calendar years of Credited Service of a Member of Division A commencing with the Calendar year 1956 and ending with the calendar years of Credited Service actually completed by a Member of Division A; provided, however, that in no case shall such average be based on more than ten (10) full calendar years preceding the date as of which such average is being determined.
- (g) Average Base Earnings shall mean the Average of Base Earnings; provided, however, that in the case of delayed retirement, such Average shall not be less than the Average of Base Earnings determined as of the Normal Retirement Date.



(h) Average Excess Earnings shall mean the Average of Excess Earnings; provided, however, that in the case of delayed retirement, such Average shall not be less than the Average of Excess Earnings determined as of the Normal Retirement Date.

(i) Normal Retirement Date shall mean the first day of the month next following the sixty-fifth birthday of a Member of Division A.

(j) Beneficiary shall mean the person last designated in writing by a Member of Division A in accordance with the provisions of Section 2.06 to receive benefits payable on the death of a Member of Division A.

(k) Contingent Annuitant shall mean the person last designated in writing by a Member of Division A to receive benefits payable under Option A or Option B as provided in Section 2.27.

**"SECTION 2.03.** Eligibility and Participation of a Person Becoming an Employee After the Effective Date. That each person becoming an Employee after the Effective Date shall, as a condition of employment, become a Member of Division A as of the first day of the month next following completion of six (6) full calendar months of Current Service, provided he meets the minimum health requirements established by the Pension Commission. Any Employee who does not meet such minimum health requirements shall become a Member of Division A on the date the Pension Commission certifies in writing that he does meet such requirements; provided, however, that all Service prior to such certification shall not be included as Current Service, notwithstanding anything in this Act to the contrary.

**"SECTION 2.04.** Eligibility and Participation of a Member of Division B who Transfers His Membership to Division A. That each Employee who is a Member of Division B and who voluntarily elects in writing to transfer his membership to Division A, in accordance with the provisions of Article 3 of this Act, shall thereafter be a Member of Division A. A Member of Division B who voluntarily elects to transfer his membership to Division A, in accordance with the provisions of Article 3 of this Act, shall cease to be a Member of Division B and shall thereafter have no rights under Article 3 of this Act.

**"SECTION 2.05.** Eligibility and Participation of Employees of the Effective Date Who Are not Members of Division B. That each Employee on the Effective Date who is not then a Member of Division B shall be eligible to become a Member of Division A as of the first day of the month next following completion of six (6) full calendar months of Credited Service, or on the Effective Date, whichever is later, provided he meets the minimum health requirements established by the Pension Commission. Any Employee who does not meet such minimum (sic) health requirements shall become a Member of Division A on the date the Pension Commission certifies in writing that he does meet such requirements; provided, however, that all Credited Service prior to such certification shall not be included as Credited Service, notwithstanding anything in this Act to the contrary.

An Employee on the Effective Date who is not then a Member of Division B shall deliver on or before September 15, 1961 written notice to the Pension Commission of his election to become a Member of Division A. In the case of an Employee on authorized leave of absence on the Effective Date, such written notice must be delivered to the Pension Commission within sixty (60) days of his return to active employment. If an Employee does not deliver such written notice within the time limits prescribed in this Section, he shall be deemed to have refused membership in Division A, and he shall forfeit his right to any credit for Prior Service if he subsequently delivers such written notice, notwithstanding anything in this Act to the contrary. He may subsequently deliver such written notice to the Pension Commission, but he shall not have any right to credit for Prior Service and he shall pay into the Fund all contributions he would have made from the Effective Date to the date he delivers such written notice to the Pension Commission.

**"SECTION 2.06.** Beneficiary Designation. That a Member of Division A may designate any person as Beneficiary to receive benefits provided by Article 2 and payable upon the death of the Member of Division A. A change in such designation may be made at any time by the Member of Division A, subject to the provisions of Section 2.26. Such designation or change in designation shall be submitted in writing to the Pension Commission in such form and manner as the Commission may prescribe. No designation of Beneficiary shall be effective unless it has been received by the Pension Commission prior to the date of death of the Member of Division A. Upon any change in designation of Beneficiary, the rights of all previously designated Beneficiaries to receive any benefits provided by Article 2 shall cease.

**"SECTION 2.07.** Termination of Membership in Division A. That if a Member of Division A terminates his membership in Division A, he shall thereafter forfeit all rights to any benefit or benefits provided by Division A arising from Service completed prior to the date his membership is terminated. The membership of any Member of Division A shall terminate upon:

(a) Withdrawal of his contributions at or any time after termination of employment, regardless of his length of Credited Service;

(b) Termination of employment, unless at such termination of employment he has completed fifteen

(15) years of Credited Services and he does not withdraw his contributions;

(c) Retirement, except disability retirement followed by re-employment as an Employee subject to Section 2.17, or early retirement, if a monthly deferred early retirement benefit was elected, followed by re-employment as an Employee subject to Section 2.16;

(d) Death;

(e) Termination of employment at any time with prejudice, where "prejudice" shall mean the termination of employment of a Member of Division A as a result of his conviction in a court of competent jurisdiction of embezzlement or larceny of public funds or properties, or malfeasance in office, or shall mean the forcing of a Member of Division A to make restitution of any funds or properties similarly taken by the Member of Division A which resulted in his termination of employment.

**"SECTION 2.08.** Prior Service Certificates. That as soon as practicable after the Effective Date, the Pension Commission shall determine the Prior Service of each Member of Division A who was an Employee on the Effective Date and shall issue to such Member of Division A certificate of his Prior Service. If the Pension Commission discovers that the Prior Service recorded on a certificate is incorrect, a corrected certificate shall be issued promptly which shall supersede any certificate previously issued. Copies of such certificates shall become a part of the permanent records maintained by the Pension Commission for the purpose of determining benefits payable to Members of Division A or to their beneficiaries or Contingent Annuitants. In establishing such records, the Pension Commission may require, in its discretion, Members of Division A, Beneficiaries, Contingent Annuitants and other persons to submit affidavits as to any information and data which affect benefits payable to Members of Division A or their Beneficiaries or Contingent Annuitants. When a Member of Division A or their Beneficiaries or Contingent Annuitants. When a Member of Division A terminates his membership in Division A as provided in Section 2.07, his certificate of Prior Service shall become void.

**"SECTION 2.09.** Contributions Rates of Members of Division A. That each Employee who is a member of Division A shall contribute to the Fund in accordance with the contribution rate or rates per calendar year which shall be (a) and (b), as follows:

(a) the contribution rate shall be three percent (3%) of Base Earnings:

(b) the contribution rate shall be six percent (6%) of Excess Earnings.

The amount of contribution payable in any payroll period by each Member of Division A shall be computed, consistent with the provisions of this Section to the extent administratively feasible, in such manner as determined by the Pension Commission, and shall be made by payroll deductions in accordance with the provisions of Section 1.07 of this Act.

**"SECTION 2.10.** Application for Benefits. That before any benefit provided for in Article 2 can be paid, all conditions applicable to the payment of the benefit must be met, application for the benefit must be presented to the Pension Commission in such form and manner as the Commission shall determine, and the Payment of benefit must be approved by the Pension Commission. If any retirement benefit provided for in Article 2 is less than twenty dollars (\$20.00) per month, the Pension Commission in its discretion may pay the actuarially equivalent value of such benefit in one lump sum, or in such other manner as the Commission may determine.

**"SECTION 2.11.** Normal Retirement -- Conditions. That each Member of Division A shall be eligible to retire on his Normal Retirement Date and to receive a benefit as provided in Section 2.12.

**"SECTION 2.12.** Normal Retirement Benefit. That a Member of Division A shall, upon retirement on his Normal Retirement Date, receive a monthly normal retirement benefit which shall be payable on his Normal Retirement Date and on the first day of each month thereafter during his lifetime, computed as of his Normal Retirement Date as one-twelfth (1/12) of the product of (a) and (b):

(a) Credited Service.

(b) Seventy-five one hundredths percent (.75%) of Average Base Earnings, plus one and fifty one-hundredths percent (1.50%) of Average Excess Earnings.

Notwithstanding anything in this Act to the contrary, no amendment of this Act shall have the effect of changing either the ratio of the contribution rate applicable to Base Earnings (as provided in Section 2.09) and the benefit rate applicable to Average Base Earnings (as provided in this Section), or the ratio of the contribution rate applicable to Excess Earnings (as provided in Section 2.09) and the benefit rate applicable to Average Excess Earnings (as provided in this Section).

**"SECTION 2.13.** Delayed Retirement -- Conditions. That a Member of Division A may remain in the active employment of the Employer beyond his Normal Retirement Date, if requested in writing to do so by the head of his department and with the written approval of the Pension Commission, and shall be

eligible to retire on his Delayed retirement Date, which shall be the first day of any month following the Effective Date and his Normal Retirement Date, and to receive a benefit as provided in Section 2.14. In no case shall a Member of Division A, other than an official of the Employer who is elected by popular vote, or by the Davidson County Quarterly Court, remain in the active employment of the Employer beyond his seventy-fifth birthday; provided however, that such Member of Division A who has reached his seventy-fifth birthday on the Effective date shall not be required to retire for a period of three (3) years after the Effective Date.

**"SECTION 2.14.** Delayed Retirement Benefit. That a Member of Division A shall, upon retirement on his Delayed Retirement Date, receive a monthly delayed retirement benefit, which shall be payable on his Delayed Retirement Date and on the first day of such computation shall be made as of his Delayed Retirement Date.

**"SECTION 2.15.** Early Retirement -- Conditions. That a Member of Division A who has reached his fifty-fifth birthday and completed twenty (20) years of Credited Service shall be eligible to retire on his Early Retirement Date, which shall be the first day of any month thereafter but prior to his Normal Retirement Date, and to receive a benefit as provided in Section 2.16.

**"SECTION 2.16.** Early Retirement Benefit. That a Member of Division A shall, upon retirement on his Early Retirement Date, receive either (a) or (b) as follows:

- (a) a monthly deferred early retirement benefit, which shall be payable on his Normal Retirement Date, provided he is then living, and on the first day of each month thereafter during his lifetime, computed in the same manner set forth in Section 2.12, except that such computation shall be made as of his Early Retirement Date; provided, however, that if the date of death of such Member of Division A occurs after his termination of employment and prior to his Normal Retirement Date, his Beneficiary shall receive a refund of the contributions standing to the credit of such deceased Member of Division A; or
- (b) an immediate monthly early retirement benefit, which shall be payable on his Early Retirement Date and on the first day of each month thereafter during his lifetime, the amount of which shall be the amount of the benefit provided in subparagraph (a) of this Section, but reduced by five-twelfths percent (5/12%) thereof for each full month in the period of time between his Early Retirement Date and his Normal Retirement Date.

If a Member of Division A who has elected a monthly deferred early retirement benefit as provided in subparagraph (a) of this Section is re-employed by the Employer, his Credited Service shall not be deemed to have been interrupted, but shall not include any time during which he was not an Employee.

**"SECTION 2.17.** Definition of Disability -- Requirements. That disability shall mean a physical or mental condition of a Member of Division A which has persisted for six (6) continuous months, which is likely to be permanent, and which has rendered him incapable of performing work which would provide income at a rate of twenty-five percent (25%) or more of his regular rate of Earnings at the time such disability began. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one hand above the wrist and one foot at or above the ankle, or the complete irrecoverable loss of the sight of both eyes, shall conclusively determine disability, notwithstanding the extent of the income of the Member of Division A after the date of such loss.

Notwithstanding any provision of this Section to the contrary, disability as defined in this Section shall not include a physical or mental condition which results directly or indirectly from:

- (a) injury intentionally self-inflicted;
- (b) injury or disease resulting from military service; or
- (c) injury or disease suffered or contracted prior to the last date hired as an Employee by the Employer.

The Pension Commission shall have exclusive authority to determine the existence of disability. The Commission in its sole discretion, may secure such medical and other evidence as it deems necessary and appropriate. Once each calendar year, the Pension Commission may require any Retired Member who is receiving a disability benefit and who has not reached his Normal Retirement Date to undergo a medical examination by a physician or physicians designated by the Pension Commission; and such examination shall be made at the place or residence of such Retired Member or at any other place the Pension Commission designates. If the Pension Commission determines from such medical examination or any other evidence that the disability of the Retired Member has ceased, his disability benefit shall be discontinued as of the date of such determination. If a Retired Member refuses to submit to such medical examination, his disability benefit shall be discontinued until he shall actually undergo such medical examination; and if he fails to undergo such medical examination for one year from the date the Pension

Commission requires such medical examination, his disability benefit shall be discontinued permanently. Prior to July 1 in each calendar year, each Retired Member who received a disability benefit in the preceding calendar year and who has not reached his Normal Retirement Rate shall submit proof satisfactory to the Pension Commission of the amount of his income earned in such preceding calendar year and derived from performing work. If the Pension Commission determines that such income is twenty-five percent (25%) or more of his regular rate of annual Earnings at the time such disability began, his disability benefit shall be discontinued as of the date of such determination; provided, however, that if the Retired Member reapplies for disability benefits and the Commission determines that disability exists, payment of his disability benefit shall resume as of the date of such determination. If a Retired Member refuses or fails to submit such proof to the Pension Commission prior to July 1, in each calendar year, his disability benefit shall be discontinued after such date and until he actually submits such proof; and if he fails to submit such proof within one year of such date, his disability benefit shall be discontinued permanently. If the disability benefit of a Retired Member is discontinued permanently prior to his Normal Retirement Date and he is re-employed by the Employer within six (6) months following the date his disability ceases, his Credited Services shall not be deemed to have been interrupted, but shall not include any time during which he was not an Employee.

**"SECTION 2.18.** Disability Not in Line of Duty -- Conditions. That a Member of Division A who is any Employee, who has completed fifteen (15) years of Credited Service, and who has become disabled as defined in Section 2.17 shall be eligible to retire from the active employment of the Employer on his Disability Retirement Date, which shall be the first day of the month following the determination by the Pension Commission that he is disabled, and to receive a disability benefit as provided in Section 2.19.

**"SECTION 2.19.** Disability Not in Line of Duty -- Benefit. That a Member of Division A shall receive a monthly disability retirement benefit, which shall be payable on his Disability Retirement Date, as defined in Section 2.18, and on the first day of each month thereafter during the period of his disability, as defined in Section 2.17, and during his lifetime. Such monthly disability retirement benefit shall be computed in the same manner set forth in Section 2.12 except that such computation shall be made as of his Disability Retirement Date and the amount of such benefit shall not be less than fifty dollars (\$50.00) per month. A Member of Division A shall also receive, upon retirement on his Disability Retirement Date, as defined in Section 2.18, a lump sum benefit equal to six (6) months of his monthly disability retirement benefits.

**"SECTION 2.20.** Disability in Line of Duty -- Conditions. That a Member of Division A who is an Employee and who becomes disabled, as defined in Section 2.17, as a direct result of any act or thing done which, as determined in the discretion of the Pension Commission, was required of him in the performance of his duty as an Employee shall be eligible to retire from the active employment of the Employer on his Disability Retirement Date, which shall be the first day of the month following the determination by the Pension Commission that he is disabled, and to receive a disability benefit as provided in Section 2.21.

**"SECTION 2.21.** Disability in Line of Duty -- Benefit. That a Member of Division A shall receive a monthly disability retirement benefit, which shall be payable on his Disability Retirement Date, as defined in Section 2.20, and on the first day of each month thereafter during the period of his disability, as defined in Section 2.17, and during his lifetime. Such monthly disability retirement benefit shall be either (a) or (b) as follows, whichever is the larger amount:

(a) a monthly benefit computed in the same manner set forth in Section 2.12 except that such computation shall be made as of his Disability Retirement Date and the amount of such benefit shall not be less than fifty dollars (\$50.00) per month; or

(b) a monthly benefit equal to one-twelfth (1/12) of the sum of fifty percent (50%) of Average Base Earnings and fifty percent (50%) of Average Excess Earnings determined as of his Disability Retirement Date; provided, however, that such sum shall be reduced by the primary insurance amount being paid to such Member of Division A under the Social Security Act.

A Member of Division A who is eligible to receive a disability benefit in accordance with the provisions of subparagraph (b) of this Section shall submit proof satisfactory to the Pension Commission that he has filed with the Social Security Administration an application for disability benefits in accordance with the provisions of the Social Security Act. The Pension Commission may require from time to time a Member of Division A who is eligible to receive a disability benefit in accordance with the provisions of subparagraph (b) of this Section to file an application for disability benefits with the Social Security Administration. If such Member of Division A fails or refuses to file such application, the Pension Commission shall estimate what would have been his primary insurance amount if a valid application for disability benefits had been filed, and his monthly disability benefit payable as provided in subparagraph (b) of this Section shall be reduced by such estimated primary insurance amount.

**"SECTION 2.22.** Death Benefits Before Retirement. That if the date of death of a Member of Division A

occurs prior to the commencement of any benefits provided by this Act and prior to the first day of the month following his fifty-fifth birthday and his completion of twenty (20) years of Credited Service, his Beneficiary shall receive a lump sum payment of the Member's contributions standing to the credit of the deceased Member of Division A. If the date of death of a Member of Division A, who was in the active employment of the Employer on such date, occurs prior to the commencement of any benefits provided by this Act, but subsequent to the first day of the month following his fifty-fifth birthday and his completion of twenty (20) years of Credited Service, his then living Beneficiary shall receive a monthly survivor benefit, which shall be payable on the first day of the month following the date of death of the Member of Division A and during the lifetime of such Beneficiary. Such monthly survivor benefit shall be computed as though the Member of Division A had retired on the day before his date of death and had elected Option B as provided in Section 2.27; provided, however, that if no Beneficiary is living on the date of death of the Member of Division A, a refund of his contributions shall be payable to his estate. In lieu of all other benefits payable to a Beneficiary upon the death of a Member of Division A, the Beneficiary may elect to receive a lump sum payment of the Member's contributions standing to the credit of the deceased Member of Division A.

**"SECTION 2.23.** Death Benefits After Retirement. That no death benefits shall be payable in the case of a Retired Member of Division A whose date of death occurs after retirement, unless the deceased Retired Member of Division A elected an optional form of benefit specifically provides for a death benefit.

**"SECTION 2.24.** Termination of Employment Before Fifteen (15) Years of Credited Service. That any Member of Division A who has completed less than fifteen (15) years of Credited Service at the time of his termination of employment shall receive, in lieu of all other benefits he is eligible to receive, a refund of the Member's contributions standing to his credit.

**"SECTION 2.25.** Termination of Employment After Fifteen (15) Years of Credited Service. That a Member of Division A who has completed at least fifteen (15) years of Credited Service at the time of his termination of employment may elect to receive, in lieu of all other benefits he is eligible to receive, either (a) or (b) as follows:

- (a) a refund of the Member's contributions standing to his credit; or
- (b) a monthly deferred vested retirement benefit, which shall be payable on his Normal Retirement Date, provided he is then living, and on the first day of each month thereafter during his lifetime, computed in the same manner set forth in Section 2.12, except that such computation shall be made as of his date of termination of employment; provided, however, that if the date of death of such Member of Division A occurs prior to his Normal Retirement Date, his Beneficiary shall receive a refund of the Member's contributions standing to the credit of such deceased Member of Division A.

Notwithstanding anything in this Section to the contrary, if the termination of employment of a Member of Division A is with prejudice, as defined in Section 2.07 (e), he shall not be entitled to elect a monthly deferred vested retirement benefit in accordance with subparagraph (b) of this Section. If a Member of Division A who has elected a monthly deferred vested retirement benefit as provided in subparagraph (b) of this Section is re-employed by the Employer, his Credited Service shall not be deemed to have been interrupted, but shall not include any time during which he was not an Employee.

**"SECTION 2.26.** Election of Optional Retirement Benefits. That a Member of Division A entitled to a retirement benefit, other than the disability benefit as provided in Section 2.19 or Section 2.21, may elect ninety (90) days or more prior to his retirement date to have a retirement benefit payable under one of the options set forth in Section 2.27 in lieu of all the benefits he may otherwise be entitled to receive. The benefit shall be paid in accordance with the terms of the option elected. A Member of Division A may revoke his election of an option, and he may make a new election at any time at least ninety (90) days prior to retirement; provided, however, that if his Beneficiary or Contingent Annuitant, as the case may be, dies prior to retirement, he may elect a new option at any time prior to retirement. Election of any option shall be subject to the approval of the Pension Commission and shall be made by the Member of Division A in writing and in such manner and form as the Pension Commission may prescribe. The Beneficiary or Contingent Annuitant last designated by the Member of Division A prior to the date he delivers written application for an option to the Pension Commission shall be the Beneficiary or Contingent Annuitant, as the case may be, to receive any benefits payable after his death. The election of Option A or Option B by a Member of Division A shall be null and void if the Member of Division A or his Contingent Annuitant, as the case may be, dies before benefits commence.

**"SECTION 2.27.** Description of Options. That the amount of any optional retirement benefit set forth in this Section shall be based on option rates adopted from time to time by the Pension Commission and shall be actuarially equivalent in value to the benefit that would otherwise be payable to a Retired Member; provided, however, that an optional retirement benefit in lieu of the delayed retirement benefit as provided in Section 2.14 shall not be less than if based on the option rate and would have been

applicable had retirement occurred at his Normal Retirement Date.

Option A: Joint and Survivor Option: a decreased retirement benefit payable to the Retired Member for life which shall continue after his death to the surviving Contingent Annuitant for for (sic) life in the same amount as that payable to the Retired Member.

Option B: Modified Joint and Survivor Option: a decreased retirement benefit payable to the Retired Member for life which shall continue after his death to the surviving Contingent Annuitant for life in the amount of fifty per cent (50%) of the amount that was payable to the Retired Member.

Option C: Social Security Option: an increased retirement benefit payable to the Retired Member during his lifetime until his Normal Retirement Date and a reduced retirement benefit payable thereafter for life in order to have a more level retirement income when such reduced retirement benefit is added to his primary insurance amount payable under the Social Security Act. The optional benefit shall be based on the Retired Member's estimated primary insurance amount payable under the Social Security Act as such Act exists on his Early Retirement Date.

Option D: 120 Payments Certain and Life Option: a decreased retirement benefit payable for life with the first 120 payments guaranteed. Any guaranteed payments due after the death of the Retired Member shall be payable to his Beneficiary.

**"SECTION 2.28.** Coverage by Social Security Act. That all Members of Division A shall be covered by the Social Security Act. Any Member of Division B who desires to transfer his coverage from Division B to Division A must do so by written notice of his election delivered to the Pension Commission prior to September 15, 1961. Each Member of Division B who elects to transfer his coverage from Division B to Division A shall, as a condition of such transfer, contribute retroactive Social Security taxes as provided in Section 1.07 of this Act, contribute Social Security taxes from the Effective Date, and make contributions to the Fund as provided in Section 2.09.

### **ARTICLE 3 DIVISION B**

**"SECTION 3.01.** Introduction. That this Article shall apply only to Employees eligible to participate in Division B and to Members of Division B as provided herein. This Article shall not apply to Employees who are Members of Division A. Members of Division B shall not be covered by the Social Security Act.

**"SECTION 3.02.** Definitions. That when used in this Article 3 and in Article 1, the following words and phrases shall have the meaning indicated unless otherwise defined or required by the context:

- (a) Prior Service shall mean all Service, whether continuous or nor, prior to the Effective Date; provided, however, that Prior Service shall include all years and completed calendar months prior to the Effective Date during which an Employee was a member of the Davidson County Teachers' Retirement Plan. Prior Service shall include any service in the Armed Forces of the United States during World War II, provided the Employee was employed by the Employer immediately prior to entering such service.
- (b) Current Service shall mean all continuous, uninterrupted Service after the Effective Date and prior to the date as of which Current Service is being determined. Current Service shall not be deemed to be interrupted, but shall not include extended sick leave or leave of absence granted by the appointing officer of the Employee and approved by the Pension Commission, or any service, voluntary and involuntary, in the Armed Forces of the United States, provided the Employee is entitled to re-employment under the provisions of the Universal Military Training and Service Act and amendments thereto, or any law applicable to such re-employment, and provided further that the Employee shall apply for re-employment with the Employer within the time specified by law and in the manner and under the conditions prescribed by law.
- (c) Credited Service shall mean the sum of Prior Service, if any, and Current Service. Credited Service shall be expressed in years and a decimal fraction of a year based on completed calendar months.
- (d) Credited Earnings shall mean the highest Earnings in any full calendar year of Credited Service in which the Employee contributed to this Fund, as it existed prior to the Effective Date of this Act.
- (e) Dependent Child shall mean a child of a Member or Retired Member of Division B who is a natural born or adopted child and who has not reached his sixteenth birthday, including a natural born child of a Member or Retired Member of Division B who is born within ten (10) months after the date of death of the Member or Retired Member of Division B.
- (f) Dependent Mother shall mean the natural mother or the stepmother of a Member or Retired Member of Division B who received more than one-half ( $\frac{1}{2}$ ) of her support from the Member or Retired Member of Division B for the full calendar year next preceding the date of death of the Member or Retired Member of Division B; provided, however, that if such woman remarries after the date of death of the

Member of Division B, she shall cease, for purposes of Article 3, to be the Dependent Mother of a deceased Member or Retired Member of Division B.

(g) Widow shall mean the woman to whom a deceased Retired Member was married on his date of retirement and for five (5) full years prior to his date of retirement, or the woman to whom a deceased Member of Division B was married on his date of death and for five (5) full years prior to his date of death; provided, however, that if such woman remarries, she shall cease, for the purpose of this Article 3, to be the Widow of a deceased Member or Retired Member of Division B.

(h) Survivor shall mean the Widow, or the Dependent Child, or the Dependent Mother or Retired Member of Division B who is eligible to receive any benefits payable upon the death of the Member or Retired Member of Division B as provided in this Article 3.

(i) Normal Retirement Date shall mean the first day of the month next following the sixtieth birthday of a member of Division B and the completion of twenty-four (24) years of Credited Service, or the completion of thirty (30) years of Credited Service by a Member of Division B, whichever is the earlier date.

**"SECTION 3.03.** Eligibility and Participation. That each Employee, including any Employee who was on authorized leave of absence from the Employer as of the Effective Date, who was covered by the Davidson County Employees' Pension and Insurance Fund as of June 30, 1961 shall become a Member of Division B on the Effective Date. Each Employee who was not covered by the Davidson County Employees' Pension and Insurance Fund as of June 30, 1961 shall not be eligible to become a Member of Division B. Each person who becomes an Employee on after the Effective Date shall not be eligible to become a Member of Division B.

**"SECTION 3.04.** Transfer of Membership to Division A. That such Employee who is a Member of Division B as of the Effective Date may elect voluntarily to transfer his membership to Division A, subject to written application received by the Pension Commission on or before September 15, 1961. Following the receipt by the Pension Commission of such application, he shall become a Member of Division A as of the Effective Date; provided, however, that he shall not be eligible to receive any benefit provided by Division A unless and until coverage by the Social Security Act is effective. If a Member of Division B who transfers his membership to Division A retires, dies, or terminates his employment prior to the date coverage by the Social Security Act is effective, he shall be eligible to receive benefits provided by Division B, and he shall not be eligible to receive any benefit provided by Division A. After the date Social Security coverage is effective, he shall have no right thereafter to any benefit provided by Division B.

**"SECTION 3.05.** Termination of Membership in Division B. That if a Member of Division B terminates his membership in Division B, he shall not be eligible thereafter to become a Member of Division B. The membership of any Member of Division B shall terminate upon:

- (a) Termination of employment;
- (b) Retirement, except disability retirement followed by re-employment as an Employee subject to Section 3.11 and Section 3.13;
- (c) Death;
- (d) Termination of employment at any time with prejudice, where "prejudice" shall mean the termination of employment of a Member of Division B as a result of his conviction in a court of competent jurisdiction of embezzlement or larceny of public funds or properties, or malfeasance in office, or shall mean the forcing of a Member of Division B to make restitution of any funds or properties similarly taken by the Member of Division B which resulted in his termination of employment.

**"SECTION 3.06.** Prior Service Certificates. That as soon as practicable after the Effective Date, the Pension Commission shall determine the Prior Service of each Member of Division B who was an Employee on the Effective Date and shall issue to such Member of Division B a Certificate of his Prior Service. If the Pension Commission discovers that the Prior Service recorded on a certificate is incorrect, a corrected certificate shall be issued promptly which shall supersede any certificate previously issued. Copies of such certificates shall become a part of the permanent records maintained by the Pension Commission for the purpose of determining benefits payable to Members of Division B or to their Survivors. In establishing such records, the Pension Commission may require, in its discretion, Members of Division B, Survivors and other persons to submit affidavits as to any information and data which affect benefits payable to Members of Division B and their Survivors. When a Member of Division B terminates his membership in Division B as provided in Section 3.05, his certificate of Prior Service shall become void.

**"SECTION 3.07.** Contribution Rates of Members and Retired Members of Division B. That each Employee who is a Member of Division B shall contribute to the Fund in accordance with the applicable contribution rate per calendar year which shall be (a) or (b) or (c), as follows:

- (a) the contribution rate for each male Member of Division B shall be five percent (5%) of his Earnings in each calendar year during which he is a Member of Division B; or
- (b) the contribution rate for each female Member of Division B who has elected to have benefits payable to her Survivor in accordance with the provisions of this Article 3 shall be five percent (5%) of her Earnings in each calendar year during which she is a member of Division B;; or
- (c) the contribution rate for each female Member of Division B who has not elected to have benefits payable to her Survivor in accordance with the provisions of this Article 3 shall be two and one-half percent (2½) of her Earnings in each calendar year during which she is a Member of Division B.

The amount of contribution payable in any payroll period by each Member of Division B shall be computed, consistent with the provisions of this Section to the extent administratively feasible, in such manner as determined by the Pension Commission, and shall be made by payroll deductions in accordance with the provisions of Section 1.07 of this Act.

If a Member of Division B has not contributed to the Fund as of his retirement date for the required number of years in accordance with the applicable provisions of this Article, he shall continue to contribute each month to the Fund, until he has contributed for such required number of years, in accordance with the applicable contribution rate per month which shall be (d) or (e) or (f), as follows:

- (d) the contribution rate for each male Retired Member shall be one-twelfth (1/12) of five percent (5%) of his Credited Earnings; or
- (e) the contribution rate for each female Retired Member who has elected to have benefits payable to her Survivor in accordance with the provisions of this Article 3 shall be one-twelfth (1/12) of five percent (5%) of her Credited Earnings; or
- (f) the contribution rate for each female Retired Member who has not elected to have benefits payable to her Survivor in accordance with the provisions of this Article 3 shall be one-twelfth (1/12) of two and one-half percent (2½) of her Credited Earnings.

The amount of contributions, if any, payable by a Retired Member shall be collected by deductions from retirement benefits payable to him or by contributions payable by the Retired Member on or before the first day of each month. The Pension Commission in its discretion may determine, with or without uniformity, the method of collecting contributions to the Fund by Retired Members, and the Commission shall have the right to change such method at any time.

The contribution rates of Members and Retired Members of Division B set forth in this Section shall be effective as of the Effective Date. The amount of contribution payable, in accordance with the provisions of the Davidson County Employees' Pension and Insurance Fund as it existed prior to the Effective Date, by each Retired Member who retired prior to the Effective Date shall not be increased or decreased by the provisions of this Act; but such amount shall be payable to this Fund for the same period of time required by the Davidson County Employees' Pension and Insurance Fund as it existed prior to the Effective Date. The amount of contribution by a Member of Division B which was payable prior to the Effective Date, in accordance with the provisions of the Davidson County Employees' Pension and Insurance Fund as it existed prior to the Effective Date, shall not be increased or decreased by the provisions of this Act; provided, however, that Members and Retired Members of Division B who retire on or after the Effective Date shall contribute to this Fund on and after the Effective Date in Accordance with the contribution rates set forth in this Section.

**"SECTION 3.08.** Application for Benefits. That before any benefit provided for in this Article 3 can be paid, all conditions applicable to the payment of the benefit must be met, application for the benefit must be presented to the Pension Commission in such form and manner as the Commission shall determine, and the payment of benefit must be approved by the Pension Commission. If any retirement benefit provided for in this Article 3 is less than twenty dollars (\$20.00) per month, the Pension Commission in its discretion may pay the actuarially equivalent value of such benefit in one lump sum, or in such other manner as the Commissioner may determine.

**"SECTION 3.09.** Normal Retirement -- Conditions. That each Member of Division B shall be eligible to retire on his Normal Retirement Date and to receive a benefit as provided in Section 3.10.

**"SECTION 3.10.** Normal Retirement Benefit. That a Member of Division B shall, upon retirement on his Normal Retirement Date, receive a monthly normal retirement benefit which shall be payable on his Normal Retirement Date and on the first day of each month thereafter during his lifetime and which shall be equal to one-twelfth (1/12) of fifty percent (50%) of his credited Earnings; provided, however, that if the Member of Division B has not contributed to the Fund as of his Normal Retirement Date for twenty-four (24) full years, he shall contribute to the Fund in accordance with the applicable contribution rate of a Retired Member as set forth in Section 3.07, and he shall contribute such amount during his



lifetime or until he has made contributions to the Fund before and after retirement for twenty-four (24) full years, whichever is the shorter period of time.

**"SECTION 3.11.** Disability in Line of Duty -- Conditions. That disability in line of duty shall mean a bodily injury or injuries which was received by accidental means, which resulted directly or exclusively of all other causes during the time a Member of Division B was engaged in the regular duties of his employment, which is likely to be permanent, and which has rendered him incapable of performing the duties of his employment. The Pension Commission shall have exclusive authority to determine the existence of disability in line of duty.

The Pension Commission, in its sole discretion, may secure medical and other evidence as it deems necessary and appropriate. Once each calendar year, the Pension Commission may require any Retired Member who is receiving a disability benefit because of disability in line of duty and who has not reached his sixtieth birthday to undergo a medical examination by a physician or physicians designated by the Pension Commission, and such examination shall be made at the place of residence of such Retired Member or at any other place the Pension Commission designates. If the Pension Commission determines from such medical examination or any other evidence that the disability of the Retired Member has ceased or that he is able to resume employment with the Employer at an annual Earnings rate equal to or greater than that in effect at the time disability was initially determined, his disability benefit shall be discontinued as of the date of such determination. If a Retired Member refused to submit to such medical examination, his disability benefit shall be discontinued until he shall actually undergo such medical examination; and if he fails to undergo such medical examination for one year from the date the Pension Commission requires such medical examination, his disability benefit shall be discontinued permanently.

If the disability benefit of a Retired Member is discontinued permanently prior to his sixteenth (sic)\* birthday and he is re-employed by the Employer within six (6) months of the date his disability ceases, his Credited Service shall not be deemed to have been interrupted, but shall not include any time during which he was not an Employee.

**\*COMPILER'S NOTE:** The Compiler assumes that "sixteenth" is incorrect.

A Member of Division B who is an Employee and who becomes disabled as defined in this Section shall be eligible to retire on his Disability Retirement Date which shall be the first day of the month following the determination by the Pension Commission that he is disabled, and to receive a disability benefit as provided in Section 3.12.

**"SECTION 3.12.** Disability in Line of Duty -- Benefit. That a Member of Division B shall receive a monthly disability retirement benefit, which shall be payable on his Disability Retirement Date, as defined in Section 3.11, and on the first day of each month thereafter during the period of his disability, as defined in Section 3.11, and during his lifetime. Such monthly disability retirement benefit shall be equal to one-twelfth (1/12) of fifty percent (50%) of his Credited Earnings.

**"SECTION 3.13.** Disability Not in Line of Duty -- Conditions. That disability not in line of duty shall mean a physical or mental condition of a Member of Division B which has rendered him incapable of efficiently discharging the duties of his position, which is likely to be permanent, and which has rendered him incapable of being gainfully employed. The Pension Commission shall have exclusive authority to determine the existence of disability not in line of duty. The Pension Commission, in its sole discretion, may secure medical and other evidence as it deems necessary and appropriate. Once each calendar year, the Pension Commission may require any Retired Member who is receiving a disability benefit because of disability not in line of duty and who has not reached his sixtieth birthday to undergo a medical examination by a physician or physicians designated by the Pension Commission, and such examination shall be made at the place of residence of such Retired Member or at any other place the Pension Commission designates. If the Pension Commission determines from such medical examination or any other evidence that the disability of the Retired Member has ceased, his disability benefit shall be discontinued as of the date of such determination. If a Retired Member refuses to submit to such medical examination, his disability benefit shall be discontinued until he shall actually undergo such medical examination; and if he fails to undergo such medical examination for one year from the date the Pension Commission requires such medical examination, his disability benefit shall be discontinued permanently. Prior to July 1 in each calendar year, the Pension Commission may require any Retired Member who received a disability benefit in the preceding calendar year because of disability not in line of duty and who has not reached his sixteenth (sic)\* birthday to submit proof satisfactory to the Pension Commission of the amount of his income earned in such preceding calendar year and derived from gainful employment, his disability benefit shall be discontinued as of the date of such determination; provided, however, that if the Retired Member reapplies for disability benefits and the Commission determines that disability exists, payment of his disability benefit shall resume as of the date of such determination. If a Retired Member

refuses to submit such proof to the Pension Commission prior to July 1 in each calendar year, his disability benefit shall be discontinued after such date and until he actually submits such proof; and if he fails to submit such proof within one year of such date, his disability benefit shall be discontinued permanently. If the disability benefit of a Retired Member is discontinued permanently prior to his sixtieth birthday and he is re-employed by the Employer within six (6) months of the date his disability ceases, his Credited Service shall not be deemed to have been interrupted, but shall not include any time during which he was not an Employee. A Member of Division B who is an Employee, who has completed at least five (5) years of Credited Service, and who becomes disabled as defined in this Section shall be eligible to retire on his Disability Retirement Date which shall be the first day of the month following the determination by the Pension Commission that he is disabled, and to receive a disability benefit as provided in Section 3.14.

\*Probably should have said sixtieth.

**"SECTION 3.14. Disability Not In Line of Duty -- Benefit.** That a Member of Division B shall receive a monthly disability retirement benefit, which shall be payable on his Disability Retirement Date, as defined in Section 3.13, and on the first day of each month thereafter during the period of his disability, as defined in Section 3.13, and during his lifetime; provided, however, that if the Member of Division B has not contributed to the Fund as of his Disability Retirement Date for twenty-four (24) full years, he shall contribute to the Fund in accordance with the applicable contribution rate of a Retired Member as set forth in Section 3.07, and he shall contribute such amount during his lifetime and during the period of his disability, as defined in Section 3.13, or until he has made contributions to the Fund before and after retirement for twenty-four (24) full years, whichever is the shorter period of time. Such monthly disability retirement benefit shall be equal to one-twelfth (1/12) of the applicable percent of his Credited Earnings (set forth in the table below) and based on his years of Credited Services, as follows:

| <b>Years of Credited Service</b> | <b>Credited Earnings</b> |
|----------------------------------|--------------------------|
| Five (5) years                   | 20%                      |
| Six (6) years                    | 25%                      |
| Seven (7) years                  | 30%                      |
| Eight (8) years                  | 35%                      |
| Nine (9) years                   | 40%                      |
| Ten (10) years or more           | 50%                      |

**"SECTION 3.15. Termination of Employment.** That if the employment of a Member of Division B is terminated with prejudice, as defined in Section 3.05 (d), he shall not be eligible to receive any benefits provided by this Section, notwithstanding anything in this Section to the contrary. A Member of Division B shall not be eligible to receive benefits provided by more than one of the subparagraphs set forth below in this Section.

(a) Any Member of Division B who has completed less than twenty-three (23) months of Credited Service at the time of his termination of employment, voluntary or involuntary, shall not receive any benefits provided by this Section.

(b) Any Member of Division B who has completed twenty-three (23) months or more of Credited Service at the time of his termination of employment, voluntary or involuntary, may elect to receive, in lieu of all other benefits he is eligible to receive, a refund of seventy-five percent (75%) of the Member's contributions to the Fund standing to his credit less any benefits paid to him prior to his date of termination of employment.

(c) Any Member of Division B who has completed ten (10) years or more of Credited Service at the time of his termination of employment and who is involuntarily deprived of his employment without fault on his part or terminates his employment voluntarily may elect to receive, in lieu of all other benefits he is eligible to receive (1) or (2), as follows:

(1) a refund of seventy-five percent (75%) of the Member's contributions to the Fund standing to his credit less any benefits paid to him prior to his date of termination of employment; or

(2) a monthly retirement benefit which shall be payable on the first day of the month following his sixtieth birthday and on the first day of each month thereafter during his lifetime and which shall be computed in the same manner set forth in Section 3.10; provided, however, that he shall contribute to the Fund in accordance with Section 3.07, as such Section applied to a Retired Member, and he shall contribute such amount during his lifetime or until he has made contributions to the Fund before and after retirement for twenty-four (24) full years, whichever is the shorter period of time.

(d) Any Member of Division B who has completed more than twenty-three (23) months of Credited Service but less than Fifteen (15) years of Credited Service and who is involuntarily deprived of his employment without fault on his part may elect to receive, in lieu of all other benefits he is eligible to receive, a refund of eighty-five percent (85%) of the Member's contributions to the Fund standing to his

credit, less any benefits paid to him prior to his date of termination of employment.

(e) Any Member of Division B who has completed fifteen (15) years or more of Credited Service, who has reached his sixtieth birthday and who is involuntarily (sic) deprived of his employment without fault on his part or terminates his employment voluntarily may elect to receive, in lieu of all other benefits he is eligible to receive, a monthly retirement benefit, which shall be payable on the first day of the month following his date of termination of employment and each month thereafter during his lifetime, equal to one-twelfth (1/12) of the applicable percent of his Credited Earnings (set forth in the table below) which shall be based on his years of Credited Service as of his date of termination of employment for the applicable number of full years (set forth in the table below), he shall contribute to the Fund in accordance with Section 3.07, as such Section applies to a Retired Member, and he shall contribute such amount during his lifetime or until he has made contributions to the Fund before and after retirement for such number of full years, whichever is the shorter period of time.

| Credited Service | Percent of Credited Earnings | Number of Full Years Member Shall Contribute to the Fund |
|------------------|------------------------------|--|
| 15 years         | 30%                          | 15 years   |
| 16 years         | 32%                          | 16 years   |
| 17 years         | 34%                          | 17 years   |
| 18 years         | 36%                          | 18 years   |
| 19 years         | 38%                          | 19 years   |
| 20 years         | 40%                          | 21 years   |
| 21 years         | 42%                          | 21 years   |
| 22 years         | 44%                          | 22 years   |
| 23 years         | 46%                          | 23 years   |
| 24 years or more | 48%                          | 24 years   |

(f) Any Member of Division B who has completed twenty-eight (28) years or more of Credited Service and who is involuntarily deprived of his employment without fault on his part may elect to receive, in lieu of all other benefits he is eligible to receive, a monthly retirement benefit which shall be payable on the first day of the month following his date of termination of employment and each month thereafter during his lifetime and which shall be computed in the manner set forth in Section 3.10; provided, however, that he shall contribute to the Fund in accordance with Section 3.07, as such Section applies to a Retired Member, and he shall contribute such amount during his lifetime or until he has made contributions to the Fund before and after retirement for twenty-four (24) full years, whichever is the shorter period of time.

**"SECTION 3.16.** Survivor Benefits -- Conditions. That the Survivor of a Member or Retired Member of Division B, as the case may be, who is eligible to receive a Survivor benefit, shall receive a Survivor benefit as provided in Section 3.17; provided, however, that the Member of (sic) Retired Member of Division B meets the following conditions:

- (a) the Member or Retired Member of Division B has contributed to the Fund for at least five (5) years in accordance with the applicable contribution rate set forth in subparagraphs (a), (b), (d) or (e) of Section 3.07, and dies from any cause; or
- (b) the Member of Division B loses his life in the line of duty.

Upon the death of a Member or Retired Member of Division B who has met the conditions set forth above in this Section, the Survivor who is eligible to receive the monthly survivor benefit provided in Section 3.17 shall be determined as follows:

(a) The Widow shall receive a monthly survivor benefit as provided in Section 3.17 which shall be payable on the first day of the month following the date of death of the Member or Retired Member of Division B and on the first day of each month thereafter during the Widow's lifetime or as long as she is a Widow, as defined in Section 3.02 (g), whichever is the shorter period of time.

(b) If there is no Widow on the day next following the date of death of a Members or Retired Member of Division B, the Dependent Child shall receive a monthly survivor benefit as provided in Section 3.17 which shall be payable on the first day of the month following the date of death of the Member or Retired Member of Division B and on the first day of each month thereafter as long as he is a Dependent Child, but in no event shall the monthly survivor benefit be payable to a Dependent Child for more than ten (10) full years. If there are Dependent Children, the monthly survivor benefit provided in Section 3.17 shall be divided equally between the Dependent Children.

(e) (sic)\* If there is not Widow or Dependent Child on the day next following the date of death of a Member or Retired Member of Division B, the Dependent Mother shall receive a monthly survivor benefit as provided in Section 3.17 which shall be payable on the first day of the month following the date of death of the Member or Retired Member of Division B and on the first day of each month thereafter during the Dependent Mother's lifetime or as long as she is a Dependent Mother, as defined in Section 3.02 (f),

whichever is the shorter period of time.

**\*COMPILER'S NOTE:** The Compiler assumes "(e)" should have been "(c)".

**"SECTION 3.17.** Survivor Benefits. That the Survivor, determined in accordance with the provisions of Section 3.16, shall receive a monthly survivor benefit which shall be payable for the period of time set forth in Section 3.16 and which shall equal sixty percent (60%) of the benefit computed in the same manner set forth in Section 3.10, except that such computation shall be made as of the date of death of the Member or Retired Member of Division B provided, however, that such monthly survivor benefit shall not be more than One Hundred Twenty-Five dollars (\$125.00) per month or less than Fifty Dollars (\$50.00) per month.

**"SECTION 3.18.** Benefits Payable to Retired Members and Survivors Prior to Effective Date. That all benefits payable to Retired Members and their Survivors in accordance with the Davidson County Employees' Pension and Insurance Fund as it existed prior to the Effective Date shall continue unimpaired for the same duration provided in the Davidson County Employees' Pension and Insurance Fund as it existed prior to the Effective Date, and such benefits shall be an obligation and liability of this System, subject to the provisions of this Act. No provision of this Act shall be construed to affect in any way the benefits payable to a Retired Member or Survivor, who commenced receiving benefits prior to the Effective Date, notwithstanding any provision of this Act to the contrary.

#### ARTICLE 4

##### MISCELLANEOUS PROVISIONS

**"SECTION 4.01.** Severability. That the provision of this Act are hereby declared to be severable; and if any of its section (sic), provisions, exceptions, sentences, clauses, phrases, or parts be unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent, now hereby declared, that this Act would be passed, even if such unconstitutional or void matter had not been included therein.

**"SECTION 4.02.** That Chapter 452 of the Private Acts of 1941, the Davidson County Pension Act, and all laws and parts of laws in conflict with this Act, be, and the same are hereby repealed, except that such repeal of Chapter 452 of the Private Acts of 1941 shall not deprive those employees of pension benefits under said Act who may have been retired prior to the passage of Chapter 29 of the Private Acts of 1945."

**Section 3.** That this Act shall have no effect, unless the same shall have been approved by a two-thirds (2/3) vote of the Quarterly County Court of Davidson County, Tennessee. Its approval or non-approval shall be proclaimed by the Chairman of the Davidson County Quarterly Court, and such action shall be certified by him to the Secretary of State.

Passed: March 16, 1961.

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