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# Private Acts of 1939 Chapter 557

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Sincerely,

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# Private Acts of 1939 Chapter 557

**COMPILER'S NOTE:** Private Acts of 1943, Chapter 121, and Private Acts of 1961, Chapter 362, which follow this act, made broad amendments to Private Acts of 1939, Chapter 557, and should be read in conjunction with this act.

**SECTION 1.** That there is hereby created a system of retirement, insurance, compensation and benefits for employees of Hamilton County who have been employed by and have served Hamilton County for a minimum number of years as provided, and have reached retirement age as provided; and there is hereby created an Employees Insurance Fund to be sustained by contributions from the County and the county employees as provided.

Any present member of the Hamilton County Employees Retirement System is hereby allowed to become a member of the Tennessee Consolidated Retirement System as prescribed by the County Board of Commission, and as provided by Title 8, Chapter 35, Part 2, if such membership is established by January 1, 1991.

As amended by: Private Acts of 1990, Chapter 199

**SECTION 2.** That the provisions of this Act shall apply to all employees of the county falling under the following classifications, to wit: Persons regularly employed directly by the county or any department of county government and paid salaries and compensation; persons regularly employed by the elected or appointed officials of the county and paid salaries and compensation; persons appointed by the State courts in the county to positions authorized by law and paid regular salaries and compensation; person elected or appointed to official positions and paid salaries or compensation directly by the county, or from income derived from the operation of the respective offices; persons elected or appointed by the county court to positions authorized by law and paid salaries and compensation; Field Deputy Sheriffs appointed by the Sheriff pursuant to the provisions of Section 10734 of the 1932 Code of Tennessee whose salaries arise from legal fees earned by them, as provided by statute, for misdemeanor and criminal work and civil work before the courts of this county.

The word "Employee" as used in this Act shall embrace and include all persons within the classifications above described. "Salaries and compensation", as used in this Act, shall mean the amount any employee may be entitled to receive for personal services as provided by law at a fixed amount per annum, per month or per diem, and shall be limited to the basic salary and compensation without additions for allowances for extra services, expenses or perquisites, such as food, lodging, transportation or other contributions. But the benefits and obligations of said Field Deputies shall be based on the actual compensation that they receive rather than on fixed salaries as in the case of other employees and officials.

Officials presently or hereafter holding elective office shall be entitled to credit for their entire tenure of service prior to the passage of this Act provided they pay into the Pension Fund within one year from March 1, 1951, an amount equal to the contributions they would have been required to make if eligible, however, upon application the Pension Board may extend the time for back payment an additional year.

Persons presently or hereafter holding Field Deputy Sheriff positions shall be entitled to credit for their entire tenure of service prior to the passage of this Act provided they pay unto the Pension Fund, within one year from the effective date of this Act, an amount equal to the contributions that they would have been required to make, if eligible, on the basis of a salary of One Hundred Fifty (\$150.00) Dollars per month.

The provisions of this Act shall also include all full time employees of the Department of Education and the Department of Health, who are paid by County check and who are not eligible to participate in any other retirement program, but such eligible employees will not be entitled to credit for service prior to the effective date hereof. The Department for such participating employees will pay the County's proportionate contribution into the fund from its respective annual appropriation or operating budget. Employees eligible hereunder who are fifty (50) years of age or over may decline to participate in this plan, provided they notify the County Pension Board in writing of such action within ninety (90) days from and after the effective date hereof.

That the provisions of this Act shall apply also to employees of the county falling under the following classifications: Persons regularly employed by the elected and appointed officials of Hamilton County who receive, or have received as compensation therefor a stated commission as provided by law for services rendered; persons elected to office in Hamilton County whose salary or compensation is paid in whole or in part by Hamilton County and who thereafter become employees of said County; persons appointed by the state courts and the district attorney general in the County to positions authorized by law and paid regular salaries and compensation by the state and/or county; and the word "employee," as used in said

Act, shall embrace and include all persons within the classifications described herein and the commission and compensation for such as used in this Act mean the amount said employee may be entitled to receive for personal services rendered as provided by law as a commission. Persons presently, heretofore or hereafter holding said positions shall be entitled to credit for the entire tenure of service prior to the passage of this Act provided they pay into the Pension Fund within one year from March 1, 1953, an amount equal to the contributions that they would have been required to make, if eligible under the provisions of this amended Act, on the basis of a commission or compensation of \$250.00 per month. However, upon application, the Pension Board may extend the time for back payment an additional year. As amended by:

Private Acts of 1949, Chapter 134  
Private Acts of 1951, Chapter 481  
Private Acts of 1953, Chapter 65  
Private Acts of 1969, Chapter 80

**SECTION 3.** (a) Contribution to Fund. For the purpose of creating a fund known as the "Employees Insurance Fund" (the "Fund"), the County and the employees of the County are required to contribute the percentage of salaries and compensation as herein provided.

(b) Trustee. The County Pension Board shall be the Trustee of the Fund.

(c) Investment Authority. The Trustee shall have full power to invest and reinvest the assets of the Fund in securities which, as of the time of the investment, are permissible investments under Tennessee Code Annotated, Section 56-3-303 (relating to authorized investments of reserves by domestic life insurance companies). Notwithstanding the foregoing: (1) the total sum invested in common and preferred stocks (including investments in "Collective Funds", as defined below, which invest in common or preferred stocks), shall not exceed fifty percent (50%) of the total value of the Fund; and (2) for purposes of this Section, the one percent (1%) limitation of Tennessee Code Annotated, Section 56-3-303(a)(4)(C) (relating to investments in common stocks) shall not apply to investments by the Fund in securities or units of any Collective Fund, but in no event shall investment by the Fund in any one Collective Fund exceed twenty percent (20%) of the value of the Fund at the time of the original investment, whether such Collective Fund invests its assets in common or preferred stocks, bonds or other investments permissible hereunder. For the purposes of this section, "Collective Funds" shall mean (A) any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. Section 80a1-64, and (B) any common trust fund, within the meaning of Section 584 of the Internal Revenue Code of 1986, as amended. Subject to the limitations set forth herein, the Trustee shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities or investments held by the Fund, as well as the proceeds, of such investments and any monies belonging to the Fund.

(d) Charges. It shall be the duty of the Trustee to estimate the amount of charges against the Fund for any annual period and retain a sufficient amount with the current collections to provide for the payment of such charges.

There shall be included in the annual county budget a sum sufficient to pay the contribution of the County to such fund, and if necessary a special tax may be levied for such purposes.

As amended by:  
Private Acts of 1969, Chapter 80  
Private Acts of 1974, Chapter 356  
Private Acts of 1995, Chapter 75

**SECTION 4.** For the fiscal year 1981-82 and thereafter so long as is considered necessary by the Pension Commission to keep the fund actuarially sound, or until said amount is changed by a subsequent actuarial report to be made within five (5) years from July 1, 1981, there shall be made annually a contribution of \$152,511.00. Contributions thereafter shall be made as determined by said actuarial report until adjusted by subsequent actuarial reports from time to time required by law.

All covered employees as of the effective date hereof, shall contribute to such fund six and four tenths (6 4/10%) percent of the salaries and compensations received hereafter during their employment, payable monthly, subject to other provisions hereof.

The basis of contributions by the employees shall be the percentage specified, but the maximum amount such percent shall apply to in all events shall be eight hundred dollars (\$800.00) per month. This base salary shall also be used to compute any future retiree benefits.

The county shall contribute as its share of contributions to the fund the difference in the amount determined by the actuarial report to keep the fund actuarially sound and the amount raised by employee contributions or, other participant contributions.

As amended by:  
Private Acts of 1941, Chapter 491  
Private Acts of 1949, Chapter 134  
Private Acts of 1953, Chapter 65

Private Acts of 1965, Chapter 197  
Private Acts of 1969, Chapter 80  
Private Acts of 1974, Chapter 356  
Private Acts of 1978, Chapter 268  
Private Acts of 1981, Chapter 156

**SECTION 5.** That it shall be the duty of the County Judge to prepare a roll of employees before July 1st, 1939, and such roll shall show the name and age and the service of each employee as of September 1st, 1939, and the salary and compensation of each employee upon which the contribution to such fund shall be based, and the percentage of such salary and compensation to be contributed by each employee.

The payments and contributions to such fund shall begin on July 1st, 1939, but no payments or allowances shall be made out of such fund until September 1st, 1939, thereafter, and eligibility of all employees shall be based upon such period.

When an employee becomes eligible for payments from such fund, the County Judge shall certify such fact to the Trustee, showing the amount to be paid and the basis of such payment.

It shall be the duty of the officials charged with the duties of paying salaries and compensation to employees hereby affected, to deduct from the monthly pay of each employee the percentage herein provided and established by the County Judge, and to pay such amounts to the Trustee to be credited to such fund.

**SECTION 6.** [Deleted by Private Acts of 1941, Chapter 491].

**SECTION 7.** Any employee who has served ten (10) years and less than fifteen (15) years, who becomes totally disabled for useful and efficient service, shall be retired and shall receive compensation from the Employees' Insurance Fund based upon thirty (30) percent of his salary and compensation as fixed for the purposes of paying contributions to such fund.

Any employee who has served fifteen (15) years and less than twenty (20) years, and has become likewise disabled shall be retired, and shall receive compensation from the Employees' Insurance Fund based upon forty (40) percent of his salary and compensation as fixed for the purpose of paying contributions to such fund.

Any employee who has served twenty (20) years or more who has not reached the retirement age who has become likewise disabled, shall be retired and shall receive compensation based upon fifty (50) percent of his salary and compensation as fixed for the purpose of paying contributions to such fund.

Before an employee is retired for disability under the provisions of this Section, such disability shall first be determined by the Federal Social Security Administration Office, and its findings shall be and become binding upon the employee and the County Pension Board.

Every employee retired under the above provisions shall submit to a physical examination as and when required by the Pension Board, and shall be subject to recall to some County employment if it shall be determined by the Social Security Office and the County Pension Board that such retired employee has become able to serve in his original or other suitable position. If such employee is offered suitable employment and declines to accept such, he shall forfeit all rights to compensation under this Act.

**SECTION 8.** All employees coming under this plan on and after the effective date hereof shall not be eligible for retirement benefits as otherwise provided for by the plan, except disability benefits, unless and until they have attained the age of sixty five (65) years, and have completed twenty (20) years of qualified service at which time those who so qualify will be entitled to monthly retirement compensation based upon forty (40%) per cent of his or her highest average salary for any four (4) year period of service, subject to the maximum amount specified in Section IV.

All employees coming under this plan on and after the effective date hereof who have served for at least twenty-four (24) years and have reached age sixty-five (65) or more, may retire and shall receive monthly retirement compensation based upon fifty (50%) per cent of his or her highest average salary for any four (4) year period of service, subject to the maximum amount specified in Section IV.

Any employee coming under this plan on and after the effective date hereof who has served for a period of less than twenty (20) years, and for any reason becomes separated from the County employment shall be reimbursed from such fund the full amount contributed by him or her thereto; provided, that should such person again be employed by the County, they will not be given service credit for the time previously employed unless, within ninety (90) days from the date of re-employment, the person repays to the retirement fund the amount withdrawn plus six (6%) per cent interest on such amount from the date of withdrawal.

Be it remembered that this Section applies only to employees coming under this plan on and after the effective date hereof and does not apply to employees covered prior hereto since the retirement

requirements for employees so covered are otherwise provided for under said Act, as amended.

As amended by: Private Acts of 1941, Chapter 491  
Private Acts of 1949, Chapter 134  
Private Acts of 1951, Chapter 481  
Private Acts of 1957, Chapter 317  
Private Acts of 1965, Chapter 197  
Private Acts of 1969, Chapter 80

**SECTION 9.** That employees and officials who have served twenty (20) years or more, and have not reached the retirement age of fifty-five (55) years, who become involuntarily separated from the service of the county, and not by removal for cause on charges of misconduct or delinquency, shall have the right to elect: (a) to be reimbursed the full amount of the contributions made to such fund by such employee or official; or (b) if fifty (50) years of age at the time, to continue to pay the same contribution to the Pension Fund as that being paid at time of separation, until the retirement age is reached, at which time the retirement with full compensation rights may be had; or (c) if fifty (50) years of age at the time of involuntary separation he may accept retirement compensation based upon forty (40%) per cent of his highest average salary for any four (4) year period of service; or (d) to defer action pending reinstatement or reemployment by the county and restoration to full compensation rights. If (d) is adopted the time lost between separation and reemployment shall not be considered.

Employees who have served fifteen (15) years and less than twenty (20) years, and who have become involuntarily separated from the employment of the county, and not by removal for cause on charges of misconduct or delinquency shall have the right to elect; (a) to be reimbursed the full amount of the contributions made to the fund by such employee or official; or (b) if fifty (50) years of age at the time, to continue to pay the same contribution to the fund as at the time of separation, until retirement age of fifty-five (55) is reached, at which time the employee shall be entitled to compensation based upon thirty-five (35%) per cent of the highest average salary for any four (4) year period of service; or (c) to defer action pending reinstatement or reemployment by the county and restoration to full compensation rights. If (c) is adopted, the time lost between separation and reemployment shall not be considered.

Payments or retirement compensation shall be made monthly and shall continue during the life of the retired employee or official, or so long as he remains eligible for same.

No retired employee or official shall be paid compensation hereunder who, after retirement accepts any lucrative position with Hamilton County, Tennessee or any agency thereof.

Any employee or official who becomes separated from the county employment having served less than five (5) years shall be reimbursed from such fund ninety (90%) per cent of the full amount contributed by him after the effective date of this Act and the full amount contributed by him prior to such date while those having served five (5) years or more shall be reimbursed the full amount contributed by them; provided that should such person again be employed by the county he shall not be given service credit for such time as he was previously employed unless he repays to such fund the amount he had withdrawn with six (6%) per cent interest.

Upon the death of any county employee or official, the nearest relative of said employee or official will be paid the full amount of contributions that he had paid in to the Pension Fund at the time of death.

That should an employee or official die after retirement and before the full amount of contributions that he had paid into the pension fund at the time of his death has been exhausted, then in that event the nearest relative of the employee or official will be paid the balance of said contributions remaining.

As amended by: Private Acts of 1949, Chapter 134  
Private Acts of 1969, Chapter 80

**SECTION 10.** Any employee who becomes entitled under the provisions of this Act to compensation by reason of retirement or involuntary separation from his employment, who has not contributed to the Employees Insurance Fund for a period totaling ten (10) years shall have deducted monthly from his pension or compensation the proper sum based on the amount of contribution being made at the time of retirement or separation, until he has contributed to said fund for a period totaling (10) years, but no employee entitled to retirement by reasons of total disability shall make further contributions to the fund.

All employees of the county coming within the purview of this Act, who left the employment of the county to enter the Armed Forces during World War II, and served with the Armed Forces during the period from December 7, 1941 and January 1, 1947, shall be given credit for such service in computing tenure of service toward retirement, under this Act.

As amended by: Private Acts of 1941, Chapter 491  
Private Acts of 1943, Chapter 121  
Private Acts of 1949, Chapter 134  
Private Acts of 1951, Chapter 481

Private Acts of 1953, Chapter 65  
Private Acts of 1961, Chapter 370

**SECTION 11.** That every employee shall be obliged to make contributions to such fund as herein provided, and the County through its authorized agents shall enforce the collections; and, notwithstanding such obligations of the employees, if any employee should be in default of the payment of such obligation for the period of thirty (30) days he shall be treated as suspended from all benefits of such Insurance Fund for the period of default and six (6) months thereafter, and shall lose all benefits of disability or separation occurring during such suspended period.

The Act shall apply to employees and officials of institutions solely owned by Hamilton County and operated through trustees, or other agencies appointed under the provisions of existing law, without regard to the fact that any municipality in said County contributes to the improvement and operating expense of such institution. The Act shall not apply to work or service in positions of a temporary nature, meaning those not in the regular, usual and continuous functions of the County Government.

As amended by:  
Private Acts of 1941, Chapter 491  
Private Acts of 1943, Chapter 121  
Private Acts of 1957, Chapter 363  
Private Acts of 1941, Chapter 491

**SECTION 12.** That should any part of this Act be declared invalid, as applying to certain employees of the County, the remaining part of the Act legally applying to other employees shall be treated as separable and valid.

**SECTION 13.** That this Act take effect from and after its passage, the public welfare requiring it.

**SECTION 14.** Wherein this Act, or any amendments thereto, refer to the word "Trustee", the same shall mean the Hamilton County Pension Board.

**SECTION 15.** The Pension Board is hereby required to have an actuarial study made of this program at least once every five (5) years, and if not actuarially sound to revise the same and to request indicated legislation therefore. The cost of the study shall be paid from the Pension Fund.

**SECTION 16.** By filing an application with the Pension Commission, an Employee may elect to receive a Pension payable in accordance with one of the following options:

(1) Employees eligible for retirement may elect full benefits as provided in the Plan which shall exclude continued payment to spouse following death.

(2) The Employee shall receive a reduced Pension payable for life, and payments in the amount of 100% of such reduced Pension shall, after the Employee's death, be continued to the spouse during the latter's lifetime.

(3) The Employee shall receive a reduced Pension payable for life, and payments in the amount of 75% of such reduced Pension shall, after the Employee's death, be continued to the spouse during the latter's lifetime.

(4) The Employee shall receive a reduced Pension payable for life, and payments in the amount of 50% of such reduced Pension shall, after the Employee's death be continued to the spouse during the latter's lifetime.

The aggregate of the Pension payments expected to be paid to an employee and/or his spouse under options 2, 3 and 4 shall be the Actuarial Equivalent of the Pension which the Employee is otherwise entitled to receive upon Retirement based on mortality and interest rate assumptions approved from time to time by the Pension Commission, copies of which are on file with the Pension Commission and available to the Employees at time of retirement to enable them to select desired option.

An Employee may elect or revoke an option prior to Retirement by filing such election or revocation in writing with the Commission prior to Retirement. Under no circumstances may an option be changed or revoked after the Employee's Retirement.

An election made pursuant at this Section shall become inoperative in the event the Employee's death occurs prior to actual Retirement; or, the death of the spouse occurs before the Employee's actual Retirement.

The above options shall also apply to those retiring under disability benefits as otherwise provided in the Plan.

Nothing herein shall be construed as to mean that any Employee shall receive less than the minimum benefit as otherwise provided in the Plan upon selection of Option 1. Employees selecting Option 2, 3 or 4 will be subject to receiving less than the minimum benefits as otherwise provided.

As amended by: Private Acts of 1974, Chapter 356

**SECTION 17.** In determining the amount of pension due an employee, the Pension Commission shall base their computations upon the four highest Employee contribution years and the pension amount shall be limited accordingly; subject only to the minimum amount as otherwise provided in the Plan.

As amended by: Private Acts of 1974, Chapter 356

**SECTION 18.** That the County Council of Hamilton County may allow the then current employees of Hamilton County who are presently members of the Hamilton County Employee Pension System the option of becoming members in the Tennessee Consolidated Retirement System, as hereinafter provided at such time as the county council shall determine such action is desirable. In the event such an option is made available to the said employees of Hamilton County, the election of said option by such an employee shall become binding on said employee at the time such election is filed with the secretary of the Board of Pension Commissioners of the Hamilton County, after membership is initially allowed by the County Council in the Tennessee Consolidated Retirement System, shall become a member of the Tennessee Consolidated Retirement System as a condition of employment, and membership in the Hamilton County Employee's Pension System shall thereafter be closed except Hamilton County Nursing Home may elect to remain under the Hamilton County Employees' Pension System.

As amended by: Private Acts of 1977, Chapter 122

**SECTION 19.** In the event membership in the Tennessee Consolidated Retirement System is allowed by the county council, an actuarial study of the Hamilton County Employees Pension System shall be conducted and all funds in excess of those needed to keep the system actuarially sound may, at the option of the county council, be paid into the Tennessee Consolidated Retirement System to reduce any prior service liability caused by the membership of Hamilton County Employees in the Tennessee Consolidated Retirement System.

**SECTION 20.** In the event provisions are made for employees of Hamilton County to become members of the Tennessee Consolidated Retirement System and receive prior service credit under one of the following options, the Hamilton County employee electing to terminate his or her membership in the Hamilton County Employees Pension System shall receive such refunds of their actual contributions to the Hamilton County Employees' Pension Fund according to such options.

(a) In the event the county council elects, by majority vote of said governing body, to provide all funding for all prior service of all eligible employees of Hamilton County, all contributions made by every such employee to the Hamilton County Employees' Pension System shall become the property of the Hamilton County Employees' Pension Fund. If this employee transfers into the Tennessee Consolidated Retirement System and subsequently ceases to be an employee of Hamilton County and withdraws from membership in the Tennessee Consolidated Retirement System prior to his retirement, such employee shall be refunded his actual contributions to the Hamilton County Employees' Pension Fund; or

(b) In the event the county council elects, by majority vote of said governing body, to provide funding by Hamilton County for ten (10) years of employment for all eligible employees of Hamilton County, all actual contributions made by every such employee to the Hamilton County Employees' Pension System during the last ten (10) years of such county employment shall become the property of the Hamilton County Employees Pension Fund. Provided further that any employee may purchase all years of county employment greater than ten (10) years by making employee contributions, plus interest, on such service. Any such service greater than ten (10) years which is not purchased by the employee shall be refunded upon Hamilton County making its initial payment to the Tennessee Consolidated Retirement System. If this employee transfers into the Tennessee Consolidated Retirement System and subsequently ceases to be an employee of Hamilton County and withdraws from membership in the Tennessee Consolidated Retirement System prior to his retirement such employee shall be refunded his actual contributions to the Hamilton County Employees' Pension Fund; or

(c) In the event the county council elects, by majority vote of said governing body, not to provide funding for any years of prior service for any employee of Hamilton County, all actual contributions made by every such employee to the Hamilton County Employees' Pension Fund shall be refunded to such employee after Hamilton County makes its initial payment to the Tennessee Consolidated Retirement System. Provided however, that this employee has the option to purchase all years of prior service with Hamilton County, upon payment of the employee's contributions, plus interest.

(d) That in the event an election is made by the county council to participate in the Tennessee Consolidated Retirement System, the county council may also determine: (a) whether all county employees who have no vested rights under the Hamilton County Employees' Pension System shall be required to transfer membership to the Tennessee Consolidated Retirement System; or (b) whether all county employees may elect either to remain a member of the present Hamilton County Employees' Pension System or to become a member in the Tennessee Consolidated Retirement System; or (c) whether all county employees may elect to (1) remain a member of the present Hamilton County Employees' Pension System, or (2) to become a member of the Tennessee Consolidated Retirement



System, or (3) to be a member of neither; but in no event may an employee receive credit for the same years of service in both systems.

(e) In the event an election is made by the county council to participate in the Tennessee Consolidated Retirement System, credit for prior service as a Hamilton County employee for those employees of Hamilton County who are presently employed by Hamilton County and who are members of the Hamilton County Employees' Pension System shall be certified to the Tennessee Consolidated Retirement System for only that period (or periods) of employment by Hamilton County for which contributions have been made by the employee to the Hamilton County Employees' Pension System, or for which the employee agrees to pay all unpaid contributions thereto in cash (including interest as may be required) based upon a promissory note therefor, within not more than twelve (12) months of said certification of prior service.

As amended by:  
Private Acts of 1943, Chapter 44  
Private Acts of 1949, Chapter 134  
Private Acts of 1957, Chapter 168  
Private Acts of 1961, Chapter 371  
Private Acts of 1977, Chapter 122

**SECTION 21.** Any member in service shall be eligible to receive credit for up to four (4) years of military service during a period of armed conflict, as determined by the pension commission, upon payment of five percent (5%) of the base salary as if they had been in the system, with the base salary assumed to be three thousand six hundred dollars (\$3,600) annually. Provided, however, no person may receive credit for military service which is credited in any other retirement system.

As amended by: Private Acts of 1981, Chapter 156

**SECTION 22.** (a) Any person who is a county commissioner or who becomes a county commissioner may participate in this retirement system upon the terms and conditions established in this section. This section shall apply only to county commissioners, unless otherwise stated herein.

(b) The terms and conditions for participation of county commissioners who have purchased their prior service shall be as follows:

(1) All prior Hamilton County commissioners shall be entitled to a refund of contributions made, subject to taxation in accordance with the Internal Revenue Code. Furthermore, all prior county commissioners shall have the option to prospectively receive the benefits provided by this act as of the date of passage.

(2) All service to Hamilton County as a county commissioner shall be allowed as credited service. Any member may also receive credit for up to four (4) years of military service during a period of armed conflict, as determined by the pension commission. However, service which is credited in any other retirement system may not be credited in this system.

(3) The funds derived from this section shall be held in trust and invested as otherwise provided for in this act.

(4) The normal retirement date of a county commissioner is the first day of the month following the later of the participant's fifty-fifth (55th) birthday and the fifth (5th) anniversary of the date the participant first served as a county commissioner. Provided, however, a member in service may not receive a retirement benefit.

(5) Upon retirement, a participant shall receive an annual, normal retirement benefit of two and one-half percent (2.5%) of the average compensation (excluding any additional compensation received by a commissioner for serving as either chairman or chairman pro tempore) for the participant's five (5) years of service which produce the highest average, (years of service being based on twelve (12) month periods commencing September 1 and ending the following August 31) times total years of service.

(6) If a participant postpones his retirement beyond his normal retirement date, he will be entitled to monthly benefits commencing on the first day of any month following his actual retirement. The deferred retirement benefit is calculated in the same way as the normal retirement benefit, based on the participant's credited service as of his date of retirement.

(7) If a participant ceases to be a county commissioner after he has completed five (5) or more years of service, but prior to his normal retirement date, he is entitled to a deferred vested benefit, which would commence at his normal retirement date and be figured as in subdivision (b)(5) above based on the participant's credited service at his date of separation. If a participant otherwise ceases to be a commissioner before retirement, no benefits shall be provided under the plan.

(8) A participant may select an optional method of benefit payment described in Section 16 in lieu of the prescribed life income, which is actuarially equivalent thereto. The purpose of the optional method is to permit the guarantee of retirement income payments for some minimum period of

time or to provide a continued life income to a surviving beneficiary after the death of a participant.

As amended by: Private Acts of 1981, Chapter 156  
Private Acts of 2004, Chapter 76

**SECTION 23.** It is the intention of the county that the Hamilton County Employee's Retirement Plan complies with all of the requirements of Internal Revenue Code (hereinafter "Code") Section 401(a) that apply to plans that are sponsored by state or local governments or political subdivisions. The county intends that this plan be considered a tax-qualified plan under Code Section 401(a) and that the retirees and beneficiaries that receive benefits from this plan enjoy the tax-deferred benefits of the plan's qualified status.

In order to assure the tax-qualified status of this plan, this private act is now being amended by the General Assembly to incorporate the following terms as part of the plan document.

This private act, along with other provisions of the law that have been established by acts of the General Assembly of the State of Tennessee and of the Hamilton County Commission that relate to providing retirement benefits for employees of the county, comprises the written documentation requirement of Code Section 401(a)(1).

**SECTION 24.** Assets Held in Trust – Assets maintained to fund the plan shall be held in trust for the purpose of providing benefits to the employees, former employees of the county, or their beneficiaries. The assets held in trust may not revert back to the county unless all benefits payable under the terms of the plan have been satisfied.

**SECTION 25.** Limitation on Benefits – Unless otherwise noted, this section shall be effective for plan years beginning after January 1, 1987.

(a) This subsection, except for subsection (a)(2), applies regardless of whether any member is or has ever been a member in another qualified plan maintained by the employer. If any member is or has ever been a member in another qualified plan or a welfare benefit fund (as defined in Section 419(e) of the Code) maintained by the employer, or an individual medical account (as defined in Section 415(1)(2) of the Code) that provides an annual addition, subsection (b) is also applicable to that member's benefits.

(1) The annual benefit otherwise payable to a member at any time shall not exceed the maximum permissible amount. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible amount, then the rate of accrual will be reduced so that the annual benefit shall equal the maximum permissible amount.

(2) The limitation in subdivision (a)(1) is deemed satisfied if the annual benefit payable to a member is not more than one thousand dollars (\$1,000) multiplied by the member's number of years of service or parts thereof (not to exceed ten (10)) with the employer, and the employer has not at any time maintained a qualified defined contribution plan, a welfare benefit plan as defined in Section 419(e) of the Code, or an individual medical account as defined in Section 415(1)(2) of the Code, in which such member participated.

(b) This subsection applies if any member is covered, or has ever been covered, by another plan maintained by the employer, including a qualified plan, a welfare benefit fund as defined in Section 419(e) of the Code, or an individual medical account as defined in Section 415(1)(2) of the Code, or a simplified employee pension which provides an annual addition maintained by the employer.

(1) If a member is, or has ever been, covered under more than one (1) qualified defined benefit plan maintained by the employer, the sum of the member's annual benefits from all such plans may not exceed the maximum permissible amount.

(2) The provisions of this subdivision (b)(2) shall not apply to limitation years beginning after December 31, 1999. If the employer maintains, or at any time maintained, one (1) or more qualified defined contribution plans covering any member in this plan, a welfare benefit fund as defined in Section 419(e) of the Code, an individual medical account as defined in Section 415(1)(2) of the Code, or a simplified employee pension, the following rules apply. The sum of the member's defined contribution fraction and defined benefit fraction shall not exceed one (1) in any limitation year, and the annual benefit otherwise payable to the member under this plan or the annual additions otherwise credited to the member under the defined contribution plan shall be limited to the level necessary to prevent the limitations of this section from being exceeded with respect to such member (but not to a figure less than the accrued benefit of such member at the beginning of such limitation year). If the projected annual benefit is reduced to the level of the accrued benefit at the beginning of the limitation year, and the sum of both fractions remains in excess of one (1), the remaining reduction to a sum of one (1) shall be accomplished by reducing the numerator of the defined contribution fraction.

(3) The annual addition to any member's accounts for any plan year shall not exceed the lesser of thirty thousand dollars (\$30,000) (or such amount for any plan year as results from the annual adjustment factor determined by the Commissioner of the Internal Revenue Service and effective on January 1 of the plan year), or twenty-five percent (25%) of such member's compensation for the plan year.

If as a result of (i) the allocation of forfeitures, (ii) a reasonable error in estimating the compensation of a member, (iii) a reasonable error in determining the amount of elective deferral contributions (within the meaning of Code Section 402(g)(3)) that may be made with respect to any individual under the limits of Code Section 415, or (iv) other facts and circumstances allowed by regulation, the annual additions limitation is exceeded in any plan year, the excess annual addition shall be charged against the member's accounts in the following order of priority by the amount required to ensure compliance with this section:

- (A) The annual additions to any other qualified defined contribution plan;
- (B) Employee contributions to this plan – The portion of such excess that consists of employee contributions shall be returned to the member. The employee contributions returned or distributed shall include income on such amounts determined in the same manner that income is determined in this plan. (However, if such method of determining income is not permitted by regulations, then income shall be determined in a manner consistent with any applicable regulations.)

(c) In the case of an individual who was a member in one (1) or more qualified defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of this section shall not cause the maximum permissible amount for such individual under all such qualified defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if all such qualified defined benefit plans met the requirements of Section 415 of the Code for all limitation years beginning before January 1, 1987.

(d) Definitions. For purposes of this section, the following terms shall be defined as follows:

(1) "Annual Additions" means the sum of the following amounts credited to a member's accounts under a qualified defined contribution plan for the limitation year:

- (A) Employer contributions;
- (B) Employee contributions; and
- (C) Forfeitures

Amounts allocated after March 31, 1984, to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the employer, shall be treated as an annual addition to a qualified defined contribution plan.

(2) "Annual Benefit" means a retirement benefit under the plan which is payable annually in the form of a straight life annuity. Except as provided below, benefit payable in a form other than a straight life annuity shall be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this section. The annual benefit shall not include any benefits attributable to employee contributions (other than contributions picked up by the employer in accordance with Code Section 414(h)) or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the employer. No actuarial adjustment to the benefit is required for (i) the value of a qualified joint and survivor annuity (as defined in Code Section 417(b)), (ii) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, preretirement death benefits, and post-retirement medical benefits), and (iii) the value of post-retirement cost-of-living increases, if any, made in accordance with Section 415(d) of the Code and Section 1.4153(c)(2)(iii) of the Treasury Regulations.

(3) "Compensation" means, solely for purposes of this section, wages, salaries, and fees or professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements, and expense allowances) and excluding the following:

- (A) Employer contributions to a plan of deferred compensation (including a Code Section 457 plan) which are not includible in the employee's gross income for the taxable year in which contributed, or any distributions from a plan of deferred compensation; and

(B) Other amounts which received special tax benefits, including pickup contributions, and contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the eligible employee).

Notwithstanding the above, effective January 1, 1998, compensation shall include salary deferrals under Sections 401(k), 403(b), 457, and 125 of the Code; however, contributions picked up by the employer shall continue to be excluded.

For limitation years beginning on and after January 1, 2001, for purposes of applying the limitations of this section, compensation paid or made available during such limitation years shall include elective amounts that are not includable in the gross income of the eligible employee by reason of Code Section 132(f)(4).

(4) "Defined Benefit Dollar Limitation" means ninety thousand dollars (\$90,000). Effective on January 1, 1988, and each January thereafter, the ninety thousand dollar (\$90,000) limitation above will be automatically adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code in such manner as the secretary shall prescribe. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

(5) "Defined Benefit Fraction" means a fraction, the numerator of which is the sum of the member's projected annual benefits under all qualified defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of (i) one hundred twenty-five percent (125%) of the dollar limitation determined for the limitation year under Sections 415(b)(1)(A) and (d) of the Code and (ii) one hundred forty percent (140%) of the highest average compensation, including any adjustments under Section 415(b)(5) of the Code, both in accordance with Section 25(d)(10) below.

Notwithstanding the above, if the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one (1) or more qualified defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent (125%) of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the qualified defined benefit plans individually and in the aggregate satisfied the requirements of Code Section 415 for all limitation years beginning before January 1, 1987.

(6) "Defined Contribution Fraction" means a fraction, the numerator of which is the sum of the annual additions to the member's account under all qualified defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years, (including the annual additions attributable to the member's nondeductible employee contributions to this and all other qualified defined benefit plans (whether or not terminated) maintained by the employer and the annual additions attributable to all welfare benefit funds, as defined in Section 419(e) of the Code or individual medical account as defined in Section 415(1)(2) of the Code, maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a qualified defined contribution plan was maintained by the employer). For purposes hereof, the maximum aggregate amount in any limitation year is the lesser of (i) one hundred twenty-five percent (125%) of the dollar limitation determined under Section 415(c)(1)(A) of the Code after adjustment under Section 415(d) of the Code and (ii) thirty-five percent (35%) of a member's compensation for such year.

If the eligible employee was a member as of the first day of the first limitation year beginning after December 31, 1986, in one (1) or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, then the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed one (1) under the terms of this plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over one (1) times (ii) the denominator of this fraction, shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the Code Section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987,

shall not be recomputed to treat all employee contributions as annual additions.

(7) "Employer" means, for purposes of this section, the government of Hamilton County, Tennessee, and any agency that adopts this plan.

(8) "Highest Average Compensation" means the average compensation for the three (3) consecutive years of service with the employer that produces the highest average.

(9) "Limitation Year" means the plan year.

(10) "Maximum Permissible Amount" means the defined benefit dollar limitation as modified below.

(A) If the member has less than ten (10) years of participation with the employer, the maximum permissible amount is reduced by one-tenth (1/10) for each year of participation (or part thereof) less than ten (10). To the extent provided in regulations or in other guidance issued by the Internal Revenue Service, the preceding sentence shall be applied separately with respect to each change in the benefit structure of the plan. The adjustments of this paragraph shall be applied in the denominator of the defined benefit fraction based upon years of service. In no event shall the reduction in the maximum permissible amount reduce the limitation to an amount less than one-tenth (1/10) of that limitation (determined without regard to this subdivision (10)(A)).

(B) Adjustment or early payment. If the annual benefit of the member commences before age sixty-two (62), the defined benefit dollar limitation shall be determined as follows:

(i) If the annual benefit of a member commences prior to age sixty-two (62), the defined benefit dollar limitation shall be the actuarial equivalent of an annual benefit beginning at age sixty-two (62), as determined above, reduced for each month by which benefits commence before the month in which the member attains age sixty-two (62). However, in no event shall the adjustment in this subdivision (10) (B) (i) result in the defined benefit dollar limitation being reduced to an amount less than the minimum specified below. If the annual benefit of a member commences on or after age fifty-five (55), the minimum amount shall be seventy-five thousand dollars (\$75,000) (with no adjustments for increases in the cost of living). If the annual benefit to a member commences before age fifty-five (55), the minimum amounts shall be the actuarial equivalent of an annual benefit of seventy-five thousand dollars (\$75,000) commencing at age fifty-five (55) (with no adjustments for increases in the cost of living).

(ii) The adjustment in subdivisions (10) (B) (i) above shall not apply in the case of a qualified member. A member is considered qualified for purposes of this paragraph if the service used in computing his benefit includes at least fifteen (15) years of full-time employment: in any police department or fire department of the employer, to provide police protection, firefighting services or emergency medical services within the jurisdiction of the employer; or as a participant of the Armed Forces of the United States; or in any combination thereof adding up to at least fifteen (15) years of full-time employment.

(iii) The adjustment in subdivision (10) (B) (i) above shall not apply to any benefit payable as a result of the member becoming disabled or to a benefit payable to the beneficiaries, survivors, or estate of member as a result of the death of the member.

(C) Adjustment for delayed payment. If the annual benefit of a member commences after age sixty-five (65), the defined benefit dollar limitation shall be adjusted so that it is the actuarial equivalent of an annual benefit of such dollar limitation beginning at age sixty-five (65).

(11) "Projected Annual Benefit" means the annual benefit to which the member would be entitled under the terms of the plan assuming:

(A) The member continues employment until normal retirement age under the plan (or current age, if later), and

(B) The member's compensation for the current limitation year and all other relevant factors used to determine benefits under the plan shall remain constant for all future limitation years.

(12) "Year of Participation" means each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (i) the member is credited with at least the period of service for benefit accrual purposes, required under the terms of the plan in order to

accrue credited employee service or credited police and fire service, and (ii) the member is included as a member under the eligibility provisions of the plan for at least one (1) day of the period of credited employee service or credited police and fire service. If these two (2) conditions are met, the portion of a year of participation credited to the member shall equal the amount of credited employee service or credited police and fire service credited to the member for such accrual computation period. A member who is permanently and totally disable within the meaning of Section 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a member to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one (1) year of participation be credited for any twelve-month period.

(e) Actuarial equivalence. All actuarial equivalence determinations in this section shall be made in accordance with this subsection. Actuarial equivalence determinations include: adjustment for early payment; adjustment for delayed payment; adjustment for payment in a form other than a life annuity; computation of the benefit attributable to employee contributions; and all other determinations of a similar nature, as required by context. The actuarial equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form, and the annuity benefit computed using a five percent (5%) interest rate assumption and the GATT mortality table. In determining the actuarially equivalent straight life annuity for a benefit form other than a non-decreasing annuity payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below fifty percent (50%) of the annual benefit payable fore the death of the survivor annuitant), or (b) the cessation or reduction of social security supplements of qualified disability payments (as defined in Code Section 401(a)(11)), the applicable interest rate, as described in Code Section 417(e)(3), will be substituted for "a five percent (5%) interest rate assumption: in the preceding sentence. To determine actuarial equivalence for a delayed payment, the interest rate assumption used is the lesser of the rate specified in Section 33 of the plan and five percent (5%). The GATT mortality table is the table specified in Revenue Ruling 95-6, implementing Section 417(e)(3) of the Code as amended by the Uruguay Round Agreements Acts of 1994. However, the GATT mortality table shall automatically be the table specified in any future Revenue Rulings or Federal Regulations that amend or supersede Revenue Ruling 95-6 by specifying a new mortality table for purposes of Section 41(e)(3) of the Code, as amended. Solely for purposes of determining the benefit attributable to employee contributions, to compute the limitations in this section, interest shall be credited to such contributions at the following rates. For period before July 1, 1988, interest shall be credited to employee contributions at the rate of five percent (5%) per year. For plan years commencing on or after July 1, 1988, interest shall be credited on accumulated employee contributions at the rate specified in Section 411(c)(2)(C)(iii) of the Code, up to the determination date. The interest rate used for periods of time commencing on the determination date shall be the rate specified in Section 417(e)(3) of the Code as of the last day of the prior plan year (as if such Code Section applied to this plan).

(f) Provided, the application of this section shall be subject to such rules as may be prescribed by the Secretary of the Treasury, in order to maintain the qualified status of the plan.

**SECTION 26.** Limitation on Earnings.

(a) For purposes of computing any benefit under the plan or any contribution made to a plan, there shall be a limit on the amount of compensation that may be considered in any plan year for any member. The limit shall be the amount specified in this section as described below.

(b) For plan years beginning after December 31, 1995, the annual compensation limit of Code Section 401(a)(17) is incorporated by reference in this plan with respect to non-eligible members; provided, however, in the case of an eligible member, the annual compensation limit of Code Section 401(a)(17) shall not apply to the extent that the application of the limitation would reduce the amount of compensation that was allowed to be taken into account under the plan as in effect on July 1, 1993. For these purposes, an eligible member is an individual who first became a member in the plan prior to the first day of the first plan year beginning after the earlier of (i) the last day of the plan year by which a plan amendment to reflect the amendments made by Section 13212 of the Omnibus Budget Reconciliation Act of 1993 is both adopted and effective, or (ii) December 31, 1995.

**SECTION 27.** Minimum Distributions - Effective July 1, 1989, notwithstanding any provisions of the plan to the contrary, the following provisions shall apply.

(a) A member shall begin to receive that member's plan benefits no later than April 1 of the calendar year

following the later of (i) the year in which he attains age seventy and one-half (70½) or (ii) the year in which he retires. However, in no case shall the member's benefit commence later than the date required by Section 401(a)(9) of the Code, and in no case shall the distribution violate the minimum distribution incidental death benefit requirements of the regulations under Section 401(a)(9) of the Code.

(b) Upon the death of a member after distribution of his benefit has commenced, the remaining portion of his interest in the plan will be distributed at least as rapidly as under the method of distribution in effect prior to the member's death.

Upon the death of a member before distribution of his benefit has commenced, the member's entire interest will be distributed no later than five (5) years after the member's death, except for situations described in (1) or (2) below.

(1) If any portion of the member's interest is payable to a designated beneficiary, the distributions may be made in substantially equal installments over a period of time that is equal to or less than the life or life expectancy of the designated beneficiary commencing no later than one (1) year after the member's death.

(2) If the designated beneficiary is the member's surviving spouse, the date distributions are required to commence in accordance with subdivision (b)(1) above shall not be earlier than the date on which the member would have attained age seventy and one-half (70½), and if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the member.

**SECTION 28.** Right to Direct Rollover.

(a) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the benefits board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions. For purposes of this section, the following terms shall be defined as follows:

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

(2) "Distributee" means a member or former member, or the spouse of the member or former member, provided such person is entitled to receive a benefit under the plan.

(3) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(4) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (A) any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and (C) the portion of any distribution that is not includible in gross income.

**SECTION 29.** Qualified Military Service - The following sentence shall apply to those members who are re-employed on or after December 12, 1994. Notwithstanding any provision of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

**SECTION 30.** Family Medical Leave Act - Notwithstanding any other provisions of the plan, in the case of an eligible employee who takes family or medical leave as an eligible employee of a covered employer under the provisions of the Family and Medical Leave Act of 1993 (FMLA), any period of FMLA leave shall be treated as continued service for purposes of eligibility to participate and vesting service to the extent required by applicable law.

**SECTION 31.** Vesting Upon Plan Termination - In the event that this plan is terminated for any reason, the accrued benefits of all members shall fully vest and become nonforfeitable.

**SECTION 32.** Plan Forfeitures - Plan forfeitures occurring as a result of a member terminating

employment with the county prior to completing five (5) years of service shall not be used to increase benefits of remaining plan members.

**SECTION 33.** Actuarial Equivalent - Effective July 1, 2002, actuarial equivalent shall mean a benefit of equivalent value on the basis of a seven and one-half percent (7/5%) interest rate, the RP-2000 Mortality Table for Employees (Male) for Members, and the RP-2000 Mortality Table for Employees (Female) for Beneficiaries.

**SECTION 34.** Definitions Applicable to this Act:

(1) "Code" means the U.S. Internal Revenue Code as amended. All references to code sections shall include any applicable rulings and regulations, and as of any future date shall automatically incorporate any amendments to such Sections, and shall be deemed to refer to any comparable provisions of any future laws.

(2) "Plan" means the Hamilton County Employees' Retirement Plan.

(3) "Plan Year" means each twelve-month period commencing July 1 and ending on the next June 30.

(4) "Spouse" means the person who is legally married to a member.

**SECTION 35.** Alienation of Assignment of Benefits: Qualified Domestic Relations Orders (QDROs).

(a) This Act, as created by Chapter 557 of the Private Acts of 1939, and any other acts amendatory thereto, is deemed to be the Hamilton County Employees' Retirement Act, hereinafter referred to under this Section 35 as "the Plan."

(b) Except as otherwise provided under Tennessee Code Annotated, Section 26-2-105, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge shall be void. No such benefit shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of the person entitled to such benefit, except for an order of assignment of support issued under Tennessee Code Annotated, section 36-5-501 or a QDRO under Tennessee Code Annotated, Section 26-2-105, subject to this paragraph (b).

(c) If a QDRO pertains to a plan member who is already receiving benefits under the Plan, the alternate payee, as identified in the QDRO, shall share in the payments being made to the plan member and shall not be allowed to change the payment method or the timing of the payments. If a QDRO pertains to a plan member who has not commenced receiving benefit payments under the Plan, the alternate payee shall not be permitted to receive benefit payments from the plan until the member commences receiving payments, and then the alternate payee shall share in the payments to be made to the member in the manner and timing of payments as elected by the member. The Plan shall not accept a QDRO that provides the alternate payee with a separate interest in a member's benefit.

(d) The responsibility for the review and processing of a QDRO is hereby delegated to the Pension commission, which may, in its discretion, further delegate some or all of such responsibility to a county employee or third party; provided, that the ultimate authority for the determination of the qualified status of a domestic relations order remains with the Pension Commission. The Pension Commission shall establish reasonable procedures to determine the qualified status of a domestic relations order.

As amended by: Private Acts of 208, Chapter 50.

**SECTION 36.** This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the Hamilton County legislative body. Its approval or rejection shall be proclaimed by the presiding officer of such county legislative body and certified by him to the Secretary of State.

As amended by: Private Acts of 208, Chapter 50.

**SECTION 37.** For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 35.

As amended by: Private Acts of 2004, Chapter 76  
Private Acts of 2018, Chapter 50.

Passed: March 9, 1939.

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