

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 212 & 220

92ND GENERAL ASSEMBLY

2003

0788L.03T

AN ACT

To repeal sections 43.080, 86.370, 86.393, 86.398, 86.407, 86.447, 86.600, 86.671, 86.690, 86.720, and 86.745, RSMo, and to enact in lieu thereof eighteen new sections relating to law enforcement.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 43.080, 86.370, 86.393, 86.398, 86.407, 86.447, 86.600, 86.671, 86.690, 86.720, and 86.745, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 43.080, 86.370, 86.374, 86.393, 86.394, 86.398, 86.407, 86.434, 86.445, 86.447, 86.600, 86.611, 86.665, 86.671, 86.676, 86.690, 86.720, and 86.745, to read as follows:

43.080. The superintendent is authorized and empowered to prescribe policies providing for increases [every five years] in the salaries of [such] members [beginning with the sixth year of service, and thereafter to fix the salaries of such members in accordance therewith, except that no such five-year increase shall exceed ten percent of the member's salary] **of the highway patrol. Each year, prior to January first, the superintendent shall submit a salary schedule report to the governor, speaker of the house of representatives, and the president pro tem of the senate. The salary schedule report prepared by the superintendent shall include, in addition to other matters deemed pertinent to the superintendent, a comparison of the salaries of police officers of the three largest police departments in the state. The governor may make additional recommendations to the report and forward them to the speaker of the house of representatives and the**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

president pro tem of the senate. The speaker of the house of representatives and the president pro tem of the senate may assign the salary schedule report to the appropriate standing committees to review the salary comparisons to ensure that parity in the salary of members of the highway patrol and officers of the three largest police departments is maintained. The superintendent of the highway patrol shall testify before the appropriate committee on the salary schedule report if called upon by such committee. The "service" of a member of the patrol, who has served in the armed forces of the United States and who has subsequently been reinstated as a member of the patrol within ninety days after receiving a discharge other than dishonorable from the armed forces of the United States, shall be considered service with the patrol as a member of the patrol rendered since last becoming a member prior to entrance into the armed forces of the United States; except that no member shall be entitled to any credit, privilege or benefit provided by this chapter if such member voluntarily extends or participates in an extension of the period of service, whether by reenlistment, waiver of discharge, acceptance of commission or any other action, with the armed forces beyond the period of service for which such member was originally commissioned, enlisted, inducted or called.

86.370. The following words and phrases as used in sections 86.370 to 86.497, unless a different meaning is plainly required by the context, shall have the following meanings, and the use of masculine gender shall include the feminine:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member and paid to the retirement board, together with all amounts paid to the retirement board by a member or by a member's beneficiary, for the purchase of prior service credits or any other purpose permitted under sections 86.370 to 86.497;

(2) "Beneficiary", any person in receipt of pension or other benefit as provided in sections 86.370 to 86.497;

(3) "Board of police commissioners", any board composed of police commissioners and any other officials or boards authorized by law to employ and manage an organized police force in the cities;

(4) "City" or "cities", any city which now has or may hereafter have a population of more than three hundred thousand and less than seven hundred thousand inhabitants;

(5) "Compensation", whenever used in connection with members of the police retirement system created by sections 86.370 to 86.497, and whether used solely or as part of another defined term, the regular compensation which a member would earn during one year on the basis of the stated compensation for his rank and position, and therefore excluding any overtime pay, meal and travel expenses, uniform or other clothing allowances, any sick leave or vacation entitlements accrued from prior years, college incentive or skill incentive allowances and any other allowances available only to particular individuals and not a part of the base stated

compensation for all persons holding the given rank and position; **except that, notwithstanding the foregoing, compensation for any year for any member shall not exceed the amount permitted to be taken into account pursuant to Section 401(a)(17) of the Internal Revenue Code as applicable to such year;**

(6) "Creditable service", prior service plus membership service as provided in section 86.423;

(7) "Final compensation", the average annual compensation of a member during his service if less than two years, or the twenty-four months of his service for which he or she received the highest salary whether consecutive or otherwise. In computing the average annual compensation of a member under this subdivision, no compensation received for service which occurred after the thirtieth full year of membership service and no compensation attributable to any time a member was suspended from service without pay shall be included. For any period of time when a member is paid on a frequency other than monthly, the member's salary for such period shall be deemed to be the monthly equivalent of the member's annual rate of compensation for such period;

(8) "Fiscal year", the fiscal year of the cities;

(9) **"Internal Revenue Code", the United States Internal Revenue Code of 1986, as amended;**

(10) "Medical board", not less than one nor more than three physicians appointed by the retirement board to arrange for and conduct medical examinations as directed by the retirement board;

[(10)] (11) "Member", a member of the police retirement system as defined in section 86.380;

[(11)] (12) "Membership service", all service rendered as a policeman for compensation after June 15, 1946, excluding all probationary service of six months or less served prior to May 1, 1951;

[(12)] (13) "Pension", annual payments for life, payable monthly, beginning with the date of retirement and ending with death; if the total of such monthly payments plus benefits pursuant to section 86.447 is less than the total of the member's accumulated contributions, the excess of such accumulated contributions over the total of such monthly payments shall be paid in one sum to the beneficiary named by the member;

[(13)] (14) "Pension fund", the fund resulting from contributions made thereto by the cities affected by sections 86.370 to 86.497 and by the members of the police retirement system;

[(14) "Policeman"] (15) **"Police officer"**, entitled to membership in the police retirement system created by sections 86.370 to 86.497, is an officer or member of the police department of the cities employed for compensation by the boards of police commissioners of the cities for police duty and includes the chief of police, lieutenant colonels, majors, superintendents, captains,

lieutenants, sergeants, corporals, detectives, patrolmen, supervisors, technicians, radio operators, radio dispatchers, jailers, and matrons, but does not include any police commissioner or members of the police reserve corps, or special officers appointed to serve at elections, or temporary police appointed at school crossings or special officers appointed to serve during emergencies, or anyone employed in a clerical or other capacity not involving police duties; except that any policeman as herein defined, who is assigned to the performance of other duties for the police departments of the cities, by reason of personal injury by accident or disability arising out of and in the course of his employment as a policeman, shall be and remain a member of the police retirement system without regard to the duties performed under such assignment; in case of dispute as to whether any person is a policeman qualified for membership in the retirement system, the decision of the board of police commissioners shall be final;

~~[(15)]~~ **(16)** "Retirement board", the board provided in section 86.393 to administer the retirement system;

~~[(16)]~~ **(17)** "Retirement system", the police retirement system of the cities as defined in section 86.373.

86.374. 1. A retirement plan pursuant to sections 86.370 to 86.497 is a qualified plan pursuant to the provisions of applicable federal law. The benefits and conditions of a retirement plan pursuant to sections 86.370 to 86.497 shall always be adjusted to ensure that the tax-exempt status is maintained.

2. The retirement board shall administer this retirement system in a manner as to retain at all times qualified status pursuant to Section 401(a) of the Internal Revenue Code.

3. The retirement board shall hold in trust the assets of this retirement system for the exclusive benefit of the members and their beneficiaries and for defraying reasonable administrative expenses of the system. No part of such assets shall, at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries, be used for or diverted to any purpose other than such exclusive benefit or to any purpose inconsistent with sections 86.370 to 86.497.

4. A member's benefit shall be one hundred percent vested and nonforfeitable upon the member's attainment of normal retirement age, which shall be the earlier of:

(1) Completion of twenty-five years of service;

(2) Age sixty if the member has completed at least ten years of creditable service;

(3) Age seventy without regard to years of service; or

(4) To the extent funded, upon the termination of the system established pursuant to sections 86.370 to 86.497 or any partial termination which affects the

member or any complete discontinuance of contributions by the city to the system. Amounts representing forfeited nonvested benefits of terminated members shall not be used to increase benefits payable from the system but may be used to reduce contributions for future plan years.

5. Distribution of benefits shall begin not later than April first of the year following the later of the calendar year during which the member becomes seventy and one-half years of age or the calendar year in which the member retires, and shall otherwise conform to Section 401(a)(9) of the Internal Revenue Code.

6. A member or beneficiary of a member shall not accrue a service retirement annuity, disability retirement annuity, death benefit, whether death occurs in the line of duty or otherwise, or any other benefit pursuant to sections 86.370 to 86.497 in excess of the benefit limits applicable to the fund pursuant to Section 415 of the Internal Revenue Code. The retirement board shall reduce the amount of any benefit that exceeds those limits by the amount of the excess. If the total benefits under this retirement system and the benefits and contributions to which any member is entitled under any other qualified plan or plans maintained by the board of police commissioners that employs the member would otherwise exceed the applicable limits pursuant to Section 415 of the Internal Revenue Code, the benefits the member would otherwise receive from this retirement system shall be reduced to the extent necessary to enable the benefits to comply with Section 415 of the Internal Revenue Code.

7. The total salary taken into account for any purpose for any member of this retirement system shall not exceed two hundred thousand dollars per year, subject to periodic adjustments in accordance with guidelines provided by the United States Secretary of the Treasury, and shall not exceed such other limits as may be applicable at any given time pursuant to Section 401(a)(17) of the Internal Revenue Code.

8. If the amount of any benefit is to be determined on the basis of actuarial assumptions that are not otherwise specifically set forth for that purpose in sections 86.370 to 86.497, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the retirement system's actuary and approved by the retirement board. The actuarial assumptions being used at any particular time shall be attached as an addendum to a copy of the retirement system's statute that is maintained by the retirement board and shall be treated for all purposes as a part of sections 86.370 to 86.497. The actuarial assumptions may be changed by the retirement system's actuary annually if approved by the retirement board, but a change in actuarial assumptions shall not result in any decrease in benefits accrued as of the effective date of the change.

9. Any member or beneficiary who is entitled to receive any distribution that

is an eligible rollover distribution, as defined by Section 402(c)(4) of the Internal Revenue Code, is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or beneficiary's choice on providing direction to the secretary of this retirement system regarding that transfer in accordance with procedures established by the retirement board.

10. For all distributions made after December 31, 2001:

(1) For the purposes of subsection 9 of this section, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan pursuant to Section 457(b) of the Internal Revenue Code which is maintained by the state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this retirement system. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code; and

(2) For purposes of subsection 9 of this section, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable.

86.393. 1. The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of sections 86.370 to 86.497 are hereby vested in a retirement board of nine persons.

2. The board shall be constituted as follows:

(1) Two members, one of whom shall be of the political party casting the highest number of votes statewide for governor in the election next preceding such member's selection and the other of whom shall be of the political party casting the next highest number of votes statewide for governor at the election next preceding such member's selection, to be selected by the board of police commissioners of such cities to serve one- and two-year terms respectively. All such subsequent members shall serve for terms of two years each or to fill an unexpired term.

(2) Two members, one of whom shall be of the political party casting the highest number of votes statewide for governor in the election next preceding such member's selection and the

other of whom shall be of the political party casting the next highest number of votes statewide for governor at the election next preceding such member's selection to be selected by the city council of said city, one of whom may be the director of finance of such city to act as ex officio member, and the other to serve for a term of two years.

(3) Five members shall be elected for three-year terms respectively or to fill an unexpired term, in annual elections in which each member of the police retirement system and, if such city has established a civilian employees' retirement system of the police department of such city pursuant to the provisions of sections 86.600 to 86.790, each member of such civilian employees' retirement system shall be entitled to one vote.

3. Commencing with the first annual election for members of the retirement board [after August 28, 1991] in 2004, the five elected members of the board shall [include] be designated and elected as follows:

(1) If a city has established a civilian employees' retirement system of the police department of such city pursuant to the provisions of sections 86.600 to 86.790, the elected members of the retirement board of such city shall consist of three restricted members and two open members:

(a) [At least] One **restricted member shall be** a member of the police retirement system who has retired from active service with the police department as of the date of such member's election to the board;

(b) [At least] One **restricted member shall be** a member of the police retirement system who, as of the date of [his] **such member's** election to the board, is in active service as a [policeman] **police officer** and has not attained the rank of sergeant or higher;

(c) [At least] One **restricted member shall be** a member of the civilian employees' retirement system of the police department of such city[, if such city has established such a system pursuant to the provisions of sections 86.600 to 86.790].

There shall be no required qualifications for open members. At the annual election in 2004 and each third year thereafter, one open member shall be elected to a three-year term. At the annual election in 2005 and each third year thereafter, one open member shall be elected to a three-year term. At the annual election in 2006 and each third year thereafter, the three restricted members shall be elected to a three-year term. Such elections shall be conducted simultaneously but as elections for three separate offices, in which only persons qualified for a respective office may be a candidate for such office;

(2) If a city has not established a civilian employees' retirement system of the police department of such city pursuant to the provisions of sections 86.600 to 86.790, the elected members of the retirement board of such city shall consist of two restricted members and three open members. All provisions of subdivision (1) of this subsection

shall apply, except that the restricted membership provided for a member of a civilian employees' retirement system shall be an open membership;

(3) In every election in which more than one position is to be filled, either for a three-year term or for the unexpired portion of the term of a position which has become vacant, every candidate in such election must declare the position to which such candidate desires to be elected; and no person may be a candidate for more than one such position in any given election;

(4) [Whenever] Any person [is] elected to a restricted position on the retirement board who at the time of such election meets the qualifications [of paragraph (a), (b), or (c) of subdivision (3) of subsection 2 of this section, that person] for such position shall be deemed to continue to meet such qualifications[, and the requirements of this section with respect to paragraph (a), (b), or (c) of subdivision (3) of subsection 2 of this section, the qualifications of which are so met by such person shall continue to be satisfied,] throughout the term to which such person was elected, regardless of any change in the rank, classification or other employment status of such person[, unless such person dies, resigns as a member of such board or for any other reason ceases to serve as a member of such board.

(5) At the first annual election for members of the retirement board after August 28, 1991, there shall be elected three members to such board for three-year terms, in addition to any other election necessary to fill the unexpired portion of a term in which a vacancy has occurred. At each of the next two such annual elections, there shall be elected one member to such board for a three-year term, in addition to any other election necessary to fill the unexpired portion of a term in which a vacancy has occurred. At such annual election in each subsequent year, there shall be elected one member to such board for a three-year term for each three-year term expiring in such year, in addition to any other election necessary to fill the unexpired portion of a term in which a vacancy has occurred].

[3.] 4. If a vacancy occurs in the office of a member of the retirement board the vacancy shall be filled for the unexpired term in the same manner as the vacated office was previously filled.

86.394. Each member of the retirement board who is in active service with the police department of a city as either a police officer, as defined in section 86.370, or as an employee, as defined in section 86.600, shall be granted authorized leave with pay by such police department to attend any and all educational seminars and like functions that have been authorized by the retirement board, including travel time to and from such functions, not to exceed ten days in any calendar year. Leave granted under this section shall not reduce vacation or other authorized leave time to which such member may be entitled without reference to this section.

86.398. 1. The retirement board may purchase with retirement system assets

from one or more insurers licensed to do business in this state one or more insurance policies that provide for reimbursement of this retirement system and any trustee, member of the retirement board, officer, or employee of the retirement system for liability imposed or damages because of an alleged act, error, or omission committed in the trustee's, board member's, officer's, or employee's capacity as a fiduciary, officer, or employee of the retirement system and for costs and expenses, including attorney fees, incurred as a trustee, board member, officer, or employee in defense of a claim for an alleged act, error, or omission, as long as the insurance policy does not provide for reimbursement of a trustee, board member, officer, or employee for liability imposed or expenses incurred because of the trustee's, board member's, officer's, or employee's personal dishonesty, fraud, lack of good faith, or intentional failure to act prudently.

2. If the insurance coverage described in subsection 1 of this section is insufficient or is not in effect, the retirement board may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that [he] **the person** is or was a member of the retirement board, or is or was serving at the request of the retirement board in the capacity which caused [his] **the person's** relationship to such action, suit or proceeding, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by [him] **the person** in connection with such action, suit or proceeding, if [he] **the person** acted in good faith and without willful malfeasance, and, with respect to any criminal action or proceeding, had reasonable cause to believe [his] **the relevant** conduct was lawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that [he] **the person** did not have reasonable cause to believe that [his] **the relevant** conduct was lawful.

[2.] 3. To the extent that a member of the retirement board has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in [subsection] **subsections 1 and 2** of this section, or in defense of any claim, issue or matter therein, [he] **the person** shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred [by him] in connection with the action, suit or proceeding **that are not covered by the insurance described in subsection 1 of this section.**

[3.] 4. Any indemnification under [subsection 1 of] this section, unless ordered by a court, shall be made by the retirement board only as authorized in each specific case upon a determination that indemnification of [a member of the retirement board] **any person potentially entitled to indemnification hereunder** is proper in the circumstances because

[he] **the person** has met the applicable standard of conduct set forth in this section. The determination shall be made by the retirement board by a majority vote of a quorum consisting of members of the retirement board who are not parties to the action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested members of the retirement board so directs, by independent legal counsel in a written opinion. Such legal counsel may but need not be counsel to the retirement system.

[4.] **5.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the retirement board in advance of the final disposition of the action, suit or proceeding as authorized by the retirement board in the specific case upon receipt of an undertaking by or on behalf of the [member of the retirement board] **person potentially entitled to indemnification hereunder** to repay such amount unless it shall ultimately be determined that [he] **the person** is entitled to be indemnified by the retirement board as authorized in this section.

86.407. 1. Subject to the limitations of sections 86.370 to 86.497 the retirement board shall, from time to time, establish rules and regulations for the administration of its assets, for the transaction of its business and for the conduct of nominations and elections of the elected members of the retirement board. [Whenever the board deems it necessary in order to maintain compliance with the qualification requirements of subdivision (3) of subsection 2 of section 86.393, the board may restrict nominations for one or more positions on the board to persons possessing the qualifications required under paragraph (a), (b), or (c) of subdivision (3) of subsection 2 of section 86.393.] **The retirement board shall be deemed to be a state agency within the meaning of chapter 536, RSMo.**

2. The retirement board shall elect from its membership, a chairman, a vice chairman and a treasurer and shall, by majority vote of its members, appoint a secretary, who may be, but need not be, one of its members. It may employ such actuarial, legal and other services as may be necessary to transact the business of the retirement system. The compensation of all persons employed by the retirement board and all other expenses of the board necessary for the operation of the retirement system shall be paid in such manner as the retirement board shall determine; provided, that the compensation of such persons as may be employed by the retirement board shall not be greater than the compensation paid for comparable abilities by the governments of the cities in which said retirement board is located.

86.434. 1. Any member entitled to commence a pension pursuant to section 86.433 with twenty-six years or more of creditable service may elect an optional distribution under the partial lump-sum option plan provided in this section if the member:

(1) Notifies the retirement system in writing of the member's retirement date at least ninety days in advance of the member's retirement date and requests an

explanation of the member's rights pursuant to this section; and

(2) Notifies the retirement system of the member's election hereunder at least thirty days in advance of the member's retirement date.

Following receipt of an initial notice of a member's retirement date and request for an explanation hereunder, the retirement system shall, at least sixty days in advance of such retirement date, provide the member a written explanation of the member's rights pursuant to this section and an estimate of the amount by which the member's regular monthly base pension would be reduced in the event of the member's election of any of the options available to the member pursuant to this section.

2. (1) A member entitled to make an election pursuant to this section may elect to receive a lump-sum distribution with the member's initial monthly pension payment pursuant to section 86.433, subject to all the terms of this section. The member may elect the amount of the member's lump-sum distribution from one, but not more than one, of the following options for which the member qualifies:

(a) A member having twenty-six or more years of creditable service may elect a lump-sum amount equal to twelve times the initial monthly base pension the member would receive if no election were made pursuant to this section;

(b) A member having twenty-seven or more years of creditable service may elect a lump-sum amount equal to twenty-four times the initial monthly base pension the member would receive if no election were made pursuant to this section; or

(c) A member having twenty-eight or more years of creditable service may elect a lump-sum amount equal to thirty-six times the initial monthly base pension the member would receive if no election were made pursuant to this section.

(2) When a member makes an election to receive a lump-sum distribution pursuant to this section, the base pension which the member would have received in the absence of the election shall be reduced on an actuarially equivalent basis to reflect the payment of the lump-sum distribution, and the reduced base pension shall be the member's base pension thereafter for all purposes relating to base pension amounts pursuant to sections 86.370 to 86.497.

3. An election pursuant to this section to receive a lump-sum distribution and reduce monthly base pension shall be void if the member dies before retirement, and amounts due a surviving spouse or other beneficiary of the member shall be determined without regard to such election.

86.445. If a city and the police department of such city adopt any program of incentives to authorize or encourage early retirements, whether for employees not yet eligible for regular retirement or for employees who are eligible but have not yet chosen to retire or for both, the retirement board shall be authorized to administer

and pay such incentives for retirees who accept such incentives and are members of this retirement system under sections 86.370 to 86.497, in addition to such other benefits as such members or their beneficiaries are entitled to receive under sections 86.370 to 86.497 provided such city shall so request and shall agree to increase the city's contribution under section 86.477 sufficiently to provide the full actuarial cost of any such incentives in addition to the contribution required of such city necessary, in conjunction with members' contributions under section 86.470, to provide all other benefits provided under sections 86.370 to 86.497.

86.447. 1. Upon receipt of the proper proofs of death of a member in service for any reason whatever or of the death of a member after having been retired and pensioned, there shall be paid, in addition to all other benefits but subject to subsection 7 of this section, the following:

(1) If a member dies while in service, such member's surviving spouse, if any, shall be paid a base pension equal to forty percent of the final compensation of such member, subject to subsequent adjustments, if any, as provided in section 86.441;

(2) If a member retires or terminates service after August 28, 1999, and dies after commencement of benefits pursuant to the provisions of sections 86.370 to 86.497, the member's surviving spouse, if any, shall be paid a base pension equal to eighty percent of the pension being received by such member, including cost-of-living adjustments to such pension but excluding supplemental retirement benefits, at the time of such member's death, subject to subsequent adjustments, if any, as provided in section 86.441;

(3) If a member retired or terminated service on or before August 28, 1999, and died after August 28, 1999, and after commencement of benefits, such member's surviving spouse shall upon application to the retirement board, be appointed and employed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in response to such requests, as may be required. For such services, the surviving spouse shall, beginning the later of August 28, 1999, or the time of such appointment under this subsection, be compensated in such amount as shall make the benefits received by such surviving spouse pursuant to this subsection equal to eighty percent of the pension being received by such member, including cost-of-living adjustments to such pension but excluding supplemental retirement benefits, at the time of such member's death, subject to subsequent adjustments, if any, as provided in section 86.441;

(4) Upon the death of any member who is in service after August 28, 2000, and who either had at least twenty-five years of creditable service or was retired or died as a result of an injury or illness occurring in the line of duty or course of employment pursuant to section 86.450, the surviving spouse's benefit provided pursuant to this subsection, without including any

supplemental retirement benefits paid such surviving spouse by this retirement system, shall not be less than six hundred dollars per month. For any member who dies, retires or terminates service on or before August 28, 2000, and who either had at least twenty-five years of creditable service or was retired or died as a result of an injury or illness occurring in the line of duty or course of employment pursuant to section 86.450, the surviving spouse shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in response to such requests, as may be required. For such services, the surviving spouse shall, beginning the later of August 28, 2000, or the time the appointment is made pursuant to this subsection, be compensated in an amount which without including supplemental retirement benefits provided by this system shall be not less than six hundred dollars monthly. A pension benefit pursuant to this subdivision shall be paid in lieu of any base pension as increased by cost-of-living adjustments granted pursuant to section 86.441. The benefit pursuant to this subdivision shall not be subject to cost-of-living adjustments, but shall be terminated and replaced by the base pension and cost-of-living adjustments to which such spouse would otherwise be entitled at such time as the total base pension and such adjustments exceed six hundred dollars monthly;

(5) Such member's child or children under the age of eighteen years at the time of the member's decease shall be paid fifty dollars per month each, subject to adjustments, if any, as provided in section 86.441, until he or she shall attain the age of eighteen years; however, each such child who is or becomes a full-time student at an accredited educational institution shall continue to receive payments hereunder for so long as such child shall remain such a full-time student or shall be in a summer or other vacation period scheduled by the institution with intent by such child, demonstrated to the satisfaction of the retirement board, to return to such full-time student status upon the resumption of the institution's classes following such vacation period, but in no event shall such payments be continued after such child shall attain the age of twenty-one years except as hereinafter provided. Any child eighteen years of age or older, who is physically or mentally incapacitated from wage earning, so long as such incapacity exists as certified by a member of the medical board, shall be entitled to the same benefits as a child under the age of eighteen;

(6) A funeral benefit of one thousand dollars.

2. For the purposes of this section, "commencement of benefits" shall begin, for any benefit, at such time as all requirements have been met entitling the member to a payment of such benefit at the next following payment date, disregarding advance notice periods required by any paying agent for physical preparation of the payment, so that a member who dies between the date all such requirements are met and the date when the system would have delivered such member's initial payment shall be deemed to have commenced such benefit.

3. If there is no person qualified to receive a pension as a surviving spouse or if a surviving spouse dies, the total amount which would be received by a qualified surviving spouse or which is being received by the surviving spouse at the date of death of such surviving spouse shall be added to the amounts received by and shall be divided among the children under the age of eighteen years and the incapacitated children in equal shares. As each child attains the age of eighteen years or has such incapacity removed, the total of the surviving spouse's pension shall then be added to and divided among the remaining children, and when there is only one child under the age of eighteen years or incapacitated, whether such child is the sole surviving child of the member or the youngest child of several children, the total amount of the surviving spouse's pension shall be paid to the child until such child reaches the age of eighteen years or such incapacity is removed.

4. (1) The surviving spouse of a member who retired or died prior to August 28, 1997, shall not be entitled to receive benefits or the payment of a pension pursuant to sections 86.370 to 86.497 unless marriage to the member occurred at least two years before the member's retirement or at least two years before the death of the member while in service; provided, that no benefits shall be denied pursuant to this subsection to the surviving spouse of a member whose death occurred in the line of duty or from an occupational disease arising out of and in the course of the member's employment.

(2) No surviving spouse of a member who retired or died while in service after August 28, 1997, and before August 28, 2000, shall be entitled to receive any benefits pursuant to this section unless such spouse was married to the member at the time of the member's retirement or death while in service.

(3) Any surviving spouse who would qualify for benefits pursuant to subdivision (1) or (2) of this subsection and who has not remarried prior to August 28, 2000, but remarries thereafter, shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in response to such requests, as may be required. For such services, such surviving spouse shall be compensated in an amount equal to the benefits such spouse would have received pursuant to sections 86.370 to 86.497 in the absence of such remarriage.

(4) No surviving spouse of a member who retires or dies in service after August 28, 2000, shall be entitled to receive any benefits pursuant to sections 86.370 to 86.497 unless such spouse was married to the member at the time of the member's retirement or death in service. Any surviving spouse who was married to such a member at the time of the member's retirement or death in service shall be entitled to all benefits for surviving spouses pursuant to sections 86.370 to 86.497 for the life of such surviving spouse without regard to remarriage.

5. If no benefits are otherwise payable to a surviving spouse or child of a deceased

member, the member's accumulated contributions, to any extent not fully paid to such member prior to the member's death or to the surviving spouse or child of such member, shall be paid in one lump sum to the member's named beneficiary or, if none, to the member's estate.

6. For purposes of this section, a determination of whether a child of a member is physically or mentally incapacitated from wage earning so that the child is entitled to benefits under this section shall be made at the time of the member's death. If a child becomes incapacitated after the member's death, or if a child's incapacity existing at the member's death is removed and such child later becomes incapacitated again, such child shall not be entitled to benefits as an incapacitated child under the provisions of this section. A child shall be deemed incapacitated only for so long as the incapacity existing at the time of the member's death continues.

7. Any beneficiary of benefits pursuant to sections [86.600 to 86.790] **86.370 to 86.497** who becomes the surviving spouse of more than one member shall be paid all benefits due a surviving spouse of that member whose entitlements produce the largest surviving spouse benefits for such beneficiary but shall not be paid surviving spouse benefits as the surviving spouse of more than one member.

86.600. As used in sections 86.600 to 86.790, unless a different meaning is plainly required by the context, the following words and phrases mean:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member and paid to the retirement board, together with all amounts paid to the retirement board by a member or by a member's beneficiary for the purchase of prior service credits or any other purpose permitted under sections 86.600 to 86.790 in all cases with interest thereon at a rate determined from time to time for such purpose by the retirement board;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of the mortality tables and interest rate as shall be adopted by the retirement board;

(3) "Appointing authority", any person or group of persons having power by law to make appointments to any position in the police departments of the cities;

(4) "Beneficiary", any person receiving a benefit from the retirement system as a result of the death of a member;

(5) "Compensation", the basic wage or salary paid an employee for any period, excluding bonuses, overtime pay, expense allowance, and other extraordinary compensation; **except that, notwithstanding the foregoing, compensation for any year for any member shall not exceed the amount permitted to be taken into account pursuant to Section 401(a)(17) of the Internal Revenue Code as applicable to such year;**

(6) "Creditable service", the period of service to which an employee, a former employee, or a member is entitled, as prescribed by sections 86.600 to 86.790;

(7) "Employee", any regularly appointed civilian employee of the police departments of

the cities as specified in sections 86.600 to 86.790, who is not eligible to receive a pension from the police pension system;

(8) "Employer", the police boards of the cities as specified in sections 86.600 to 86.790;

(9) "Final compensation", the average annual compensation of a member during his or her service if less than two years, or the twenty-four months of his or her service for which he or she received the highest salary whether consecutive or otherwise. In computing the average annual compensation of a member under this subsection, no compensation attributable to any time a member was suspended from service without pay shall be included. For any period of time when a member is paid on a frequency other than monthly, the member's salary for such period shall be deemed to be the monthly equivalent of the member's annual rate of compensation for such period;

(10) **"Internal Revenue Code", the United States Internal Revenue Code of 1986, as amended;**

(11) "Medical board", the board of physicians chosen by the retirement board;

[[11]] (12) "Member", any member of the retirement system as provided by sections 86.600 to 86.790;

[[12]] (13) "Normal retirement", retirement from the service of the employer on or after the normal retirement date;

[[13]] (14) "Operative date", the date this retirement system becomes operative;

[[14]] (15) "Pension", the annual payments for life which shall be payable in equal monthly installments to a member or his or her spouse;

[[15]] (16) "Retirement board", the persons appointed or elected to be members of the retirement board for civilian employees of police departments of the cities;

[[16]] (17) "Retirement system", the retirement system of the civilian employees of the cities as specified in sections 86.600 to 86.790;

[[17]] (18) "Surviving spouse", the legally married wife or husband of a member surviving the member's death.

86.611. 1. A retirement plan pursuant to sections 86.600 to 86.790 is a qualified plan pursuant to the provisions of applicable federal law. The benefits and conditions of a retirement plan pursuant to sections 86.600 to 86.790 shall always be adjusted to ensure that the tax-exempt status is maintained.

2. The retirement board shall administer this retirement system in such manner as to retain at all times qualified status pursuant to Section 401(a) of the Internal Revenue Code.

3. The retirement board shall hold in trust the assets of this retirement system for the exclusive benefit of the members and their beneficiaries and for defraying reasonable administrative expenses of the system. No part of such assets shall, at any

time prior to the satisfaction of all liabilities with respect to members and their beneficiaries, be used for or diverted to any purpose other than such exclusive benefit or to any purpose inconsistent with sections 86.600 to 86.790.

4. A member's benefit shall be one hundred percent vested and nonforfeitable upon the member's attainment of normal retirement age, which shall be the earlier of:

(1) The attaining of the age of sixty-five or the member's tenth anniversary of employment, whichever is later;

(2) When the total sum of age and years of service equals or exceeds eighty; or

(3) To the extent funded, upon the termination of the system established pursuant to sections 86.600 to 86.790 or any partial termination which affects the member or any complete discontinuance of contributions by the city to the system. Amounts representing forfeited nonvested benefits of terminated members shall not be used to increase benefits payable from the system but may be used to reduce contributions for future plan years.

5. Distribution of benefits shall begin not later than April first of the year following the later of the calendar year during which the member becomes seventy and one-half years of age or the calendar year in which the member retires, and shall otherwise conform to Section 401(a)(9) of the Internal Revenue Code.

6. A member or beneficiary of a member shall not accrue a service retirement annuity, disability retirement annuity, death benefit, whether death occurs in the line of duty or otherwise, or any other benefit pursuant to sections 86.600 to 86.790 in excess of the benefit limits applicable to the fund pursuant to Section 415 of the Internal Revenue Code. The retirement board shall reduce the amount of any benefit that exceeds the limits of this section by the amount of the excess. If the total benefits under this retirement system and the benefits and contributions to which any member is entitled under any other qualified plan or plans maintained by the board of police commissioners that employs the member would otherwise exceed the applicable limits pursuant to Section 415 of the Internal Revenue Code, the benefits the member would otherwise receive from this retirement system are reduced to the extent necessary to enable the benefits to comply with Section 415 of the Internal Revenue Code.

7. The total salary taken into account for any purpose for any member of this retirement system shall not exceed two hundred thousand dollars per year, subject to periodic adjustments in accordance with guidelines provided by the United States Secretary of the Treasury and may not exceed such other limits as may be applicable at any given time pursuant to Section 401(a)(17) of the Internal Revenue Code.

8. If the amount of any benefit is determined on the basis of actuarial assumptions that are not specifically set forth for that purpose in sections 86.600 to 86.790, the actuarial assumptions used are those earnings and mortality assumptions used on the date of the determination by the retirement system's actuary and approved by the retirement board. The actuarial assumptions used at any particular time shall be attached as an addendum to a copy of the retirement system's statute maintained by the retirement board and shall be treated for all purposes as part of sections 86.600 to 86.790. The actuarial assumptions may be changed by the retirement system's actuary annually if approved by the retirement board, but a change in actuarial assumptions shall not result in any decrease in benefits accrued as of the effective date of the change.

9. Any member or beneficiary who is entitled to receive any distribution that is an eligible rollover distribution, as defined by Section 402(c)(4) of the Internal Revenue Code, is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or beneficiary's choice on providing direction to the secretary of this retirement system regarding that transfer in accordance with procedures established by the retirement board.

10. For all distributions made after December 31, 2001:

(1) For the purposes of subsection 9 of this section, an eligible retirement plan shall also mean an annuity described in Section 403(b) of the Internal Revenue Code and an eligible plan pursuant to Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this retirement system. The definition for eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code; and

(2) For the purposes of subsection 9 of this section, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable.

86.665. 1. Any member entitled to commence a pension pursuant to either section 86.650 or 86.660 may elect an optional distribution under the partial lump-sum option plan provided in this section if such member:

(1) Notifies the retirement system in writing of such member's retirement date at least ninety days in advance thereof and requests an explanation of such member's rights pursuant to this section; and

(2) Notifies the retirement system of the member's election hereunder at least thirty days in advance of the retirement date.

Following receipt of an initial notice of a member's retirement date and request for an explanation hereunder, the retirement system shall, at least sixty days in advance of such retirement date, provide such member a written explanation of such member's rights pursuant to this section and an estimate of the amount by which such member's regular monthly base pension would be reduced in the event of the member's election of any of the options available to such member pursuant to this section.

2. (1) A member entitled to make an election pursuant to this section may elect to receive a lump-sum distribution with such member's initial monthly pension payment pursuant to section 86.650 or 86.660, subject to all the terms of this section. The member may elect the amount of the member's lump-sum distribution from one, but not more than one, of the following options for which such member qualifies:

(a) A member having one or more years of creditable service after such member's eligible retirement date may elect a lump-sum amount equal to twelve times the initial monthly base pension the member would receive if no election were made pursuant to this section;

(b) A member having two or more years of creditable service after such member's eligible retirement date may elect a lump-sum amount equal to twenty-four times the initial monthly base pension the member would receive if no election were made pursuant to this section; or

(c) A member having three or more years of creditable service after such member's eligible retirement date may elect a lump-sum amount equal to thirty-six times the initial monthly base pension the member would receive if no election were made pursuant to this section.

For purposes of this section, "eligible retirement date" for a member shall mean the earliest date on which the member could elect to retire and be entitled to receive a pension pursuant to either section 86.650 or 86.660.

(2) When a member makes an election to receive a lump-sum distribution pursuant to this section, the base pension that the member would have received in the

absence of an election shall be reduced on an actuarially equivalent basis to reflect the payment of the lump-sum distribution, and the reduced base pension shall be the member's base pension thereafter for all purposes relating to base pension amounts pursuant to sections 86.600 to 86.790.

(3) If a member electing a lump-sum distribution pursuant to this section has elected the optional annuity described in section 86.650, the calculation of such member's pension shall be made in the following order:

(a) The amount of the member's normal pension pursuant to section 86.650 shall be reduced if applicable by any reductions required pursuant to section 86.660;

(b) The amount of the normal pension as determined pursuant to paragraph (a) of this subdivision shall be reduced to the actuarially equivalent amount to produce the optional form of annuity described in subsection 2 of section 86.650;

(c) The amount of reduced pension as determined pursuant to paragraph (b) of this subdivision shall be further reduced as required to produce an actuarially equivalent benefit in the form of the lump-sum distribution option elected pursuant to this section and a remaining monthly annuity which shall be paid on the basis that the annuity for the member's spouse if such spouse survives the member shall be the same amount as the annuity paid the member and shall be paid to such surviving spouse for the lifetime of such spouse without regard to remarriage.

3. An election pursuant to this section to receive a lump-sum distribution and reduced monthly base pension shall be void if the member dies before retirement, and amounts due a surviving spouse or other beneficiary of the member shall be determined without regard to such election.

86.671. 1. Any [period] **periodic** payment, excluding payments for medical treatment, which may be paid or payable by the cities pursuant to the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death shall be offset against any benefits payable to the recipient of the workers' compensation payments from funds provided by the cities pursuant to the provisions of sections 86.600 to 86.790 on account of the same disability or death. In no event, however, shall the amount paid from funds pursuant to the provisions of sections 86.600 to 86.790 be less than the amount which represents the member's percentage, as defined in subsection 4 of this section, of total benefits payable pursuant to sections 86.600 to 86.790, before any offset for workers' compensation benefits.

2. Any lump sum amount, excluding payments for medical treatments, which may be paid or payable by the cities pursuant to the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death shall be offset against any benefits payable from funds provided by the cities pursuant to the

provisions of sections 86.600 to 86.790 on account of the same disability or death. The amounts by which each periodic payment made pursuant to the provisions of sections 86.600 to 86.790 is offset or reduced shall be computed as the periodic amount necessary to amortize as an annuity over the period of time represented by the respective workers' compensation benefits the total amount of the lump sum settlement received as a workers' compensation benefit by a beneficiary of the retirement system. Such computation shall be based upon the same interest rate and mortality assumptions as used for the retirement system at the time of such computation. In no event, however, shall the amount paid from funds pursuant to the provisions of sections 86.600 to 86.790 be less than the amount which represents the member's percentage, as defined in subsection 4 of this section, of total benefits payable pursuant to sections 86.600 to 86.790, before any offset for workers' compensation benefits.

3. The retirement board shall adopt such rules and regulations as may be necessary to effectuate the purposes of this section.

4. As used in this section, the term "member's percentage" shall be the fraction of which the numerator is the percentage of compensation contributed by a working member to the retirement pension system pursuant to section 86.760 during the pay period immediately preceding such member's death or disability which created entitlement to benefits and the denominator is the sum of percentages of a member's compensation contributed by a working member and the city pursuant to section 86.760 to the retirement pension system during such pay period. Such percentage shall identify the portion of any benefits due pursuant to the provisions of sections 86.600 to 86.790 which is deemed to have been provided by the member's own contributions.

86.676. If a city and the police department of such city adopt any program of incentives to authorize or encourage early retirements, whether for employees not yet eligible for regular retirement or for employees who are eligible but have not yet chosen to retire or for both, the retirement board shall be authorized to administer and pay such incentives for retirees who accept such incentives and are members of this retirement system under sections 86.600 to 86.790, in addition to such other benefits as such members or their beneficiaries are entitled to receive under sections 86.600 to 86.790, provided such city shall so request and shall agree to increase said city's contribution under section 86.760 sufficiently to provide the full actuarial cost of any such incentives in addition to the contribution required of such city necessary, in conjunction with members' contribution under section 86.760, to provide all other benefits provided under sections 86.600 to 86.790.

86.690. 1. Upon death after August 28, 2001, of a member for any cause prior to retirement, the following amounts shall be payable subject to subsection 5 of this section, as full and final settlement of any and all claims for benefits under this retirement system:

(1) If the member has less than five years of creditable service, the member's surviving spouse shall be paid, in a lump sum, the amount of accumulated contributions and interest. If there be no surviving spouse, payment shall be made to the member's designated beneficiary, or if none, to the executor or administrator of the member's estate.

(2) If the member has at least five, but less than twenty years of creditable service, the member's surviving spouse may elect, in lieu of the lump sum settlement in subdivision (1) of this subsection, an annuity. Such annuity shall be one-half of the member's accrued annuity at date of death as computed in section 86.650. The effective date of the election shall be the latter of the first day of the month after the member's death or attainment of what would have been the member's early retirement date as provided in section 86.660.

(3) If the member has at least twenty years of creditable service, the member's surviving spouse may elect, in lieu of the lump sum settlement in subdivision (1) of this subsection, the larger of the annuity as computed in subdivision (2) of this subsection or an annuity determined on a joint and survivor's basis from the actuarial value of the member's accrued annuity at date of death.

(4) Any death of a retired member occurring before the date of first payment of the retirement annuity shall be deemed to be a death before retirement.

(5) Benefits payable pursuant to this section shall continue for the lifetime of such surviving spouse without regard to remarriage.

(6) No surviving spouse of a member who dies in service after August 28, 2001, shall be entitled to receive any benefits pursuant to sections 86.600 to 86.790 unless such spouse was married to the member at the time of the member's death in service.

2. Upon death following retirement for any cause after August 28, 2001, of a member who has not elected the optional annuity pursuant to section 86.650, the member's surviving spouse shall receive a pension payable for life, equaling one-half of the member's normal retirement allowance, computed under section 86.650, as of the member's actual retirement date, subject to adjustments provided in subsection 5 of section 86.675, if any; provided, no surviving spouse of a member who retires after August 28, 2001, shall be entitled to receive any benefits pursuant to sections 86.600 to 86.790 unless such spouse was married to the member at the time of the member's retirement. Any surviving spouse who was married to such a member at the time of the member's retirement shall be entitled to all benefits for surviving spouses pursuant to sections 86.600 to 86.790 for the life of such surviving spouse without regard to remarriage. If there be no surviving spouse, payment of the member's accumulated contributions less the amount of any prior payments from the retirement system to the member or to any beneficiary of the member shall be made to the member's designated beneficiary or, if none, to the personal representative of the member's estate.

3. Any surviving spouse of a member who dies in service or retired prior to August 28,

2001, who otherwise qualifies for benefits pursuant to subsection 1 or 2 of this section and who has not remarried prior to August 28, 2001, but remarries thereafter, shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions in writing or orally in response to such requests, as may be required. For such services, such surviving spouse shall be compensated in an amount equal to the benefits such spouse would have received pursuant to sections 86.600 to 86.790 in the absence of such remarriage.

4. Should the total amount paid from the retirement system to a member, the member's surviving spouse [and], any other beneficiary of the member, **and the funeral benefit under subsection 6 of this section** be less than the member's accumulated contributions, an amount equal to such difference shall be paid to the member's designated beneficiary or, if none, to the personal representative of the member's estate, and such payment shall constitute full and final payment of any and all claims for benefits under the retirement system.

5. Any beneficiary of benefits pursuant to sections 86.600 to 86.790 who becomes the surviving spouse of more than one member shall be paid all benefits due a surviving spouse of that member whose entitlements produce the largest surviving spouse benefits for such beneficiary but shall not be paid surviving spouse benefits as the surviving spouse of more than one member, except that any surviving spouse for whom an election has been made for an optional annuity under subsection 2 of section 86.650 shall be entitled to every annuity for which such surviving spouse has so contracted.

6. Upon receipt of the proper proof of death of a member in service after August 28, 2003, or the death of a member in service on or after August 28, 2003, who dies after having been retired and pensioned, there shall be paid in addition to all other benefits a funeral benefit of one thousand dollars.

86.720. The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of sections 86.600 to 86.790 are hereby vested in the retirement board. The retirement board shall, from time to time, establish rules and regulations for the administration of its assets and for the transaction of its business. **The retirement board shall be deemed to be a state agency within the meaning of chapter 536, RSMo.** The retirement board shall elect from its membership a chairman, a vice chairman, and a treasurer, and shall, by majority vote of its members, appoint a secretary, who may be but need not be one of its members. The retirement board may employ any actuarial, legal and other services as may be necessary to transact the business of the retirement system. The compensation of all persons employed by the retirement board and all other expenses of the board necessary for the operation of the retirement system shall be paid in the manner as the retirement board shall determine; except that the compensation of the persons as may be

employed by the retirement board shall not be greater than the compensation paid for comparable abilities by the government of the city in which the retirement board is located.

86.745. 1. **The retirement board may purchase with retirement system assets from one or more insurers licensed to do business in this state one or more insurance policies that provide for reimbursement of the retirement system and any trustee, member of the retirement board, officer, or employee of the retirement system for liability imposed or damages because of an alleged act, error, or omission committed in the trustee's, board member's, officer's, or employee's capacity as a fiduciary, officer, or employee of the retirement system and for costs and expenses, including attorney fees, incurred as a trustee, board member, officer, or employee in defense of a claim for an alleged act, error, or omission, as long as the insurance policy does not provide for reimbursement of a trustee, board member, officer, or employee for liability imposed or expenses incurred because of the trustee's, board member's, officer's, or employee's personal dishonesty, fraud, lack of good faith, or intentional failure to act prudently.**

2. **If the insurance coverage described in subsection 1 of this section is insufficient or is not in effect**, the retirement board may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that [he] **the person** is or was a member of the retirement board, or is or was serving at the request of the retirement board in the capacity which caused [his] **the person's** relationship to such action, suit or proceeding, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by [him] **the person** in connection with such action, suit or proceeding, if [he] **the person** acted in good faith and without willful malfeasance, and, with respect to any criminal action or proceeding, had reasonable cause to believe [his] **the relevant** conduct was lawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that [he] **the person** did not have reasonable cause to believe that [his] **the relevant** conduct was lawful.

[2.] 3. To the extent that a member of the retirement board has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in [subsection] **subsections 1 and 2** of this section, or in defense of any claim, issue or matter therein, [he] **the person** shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred [by him] in connection with the action, suit or proceeding **that are not covered by the insurance described in subsection 1 of this section.**

[3.] 4. Any indemnification under [subsection 1 of] this section, unless ordered by a

court, shall be made by the retirement board only as authorized in each specific case upon a determination that indemnification of [the member of the retirement board] **any person potentially entitled to indemnification hereunder** is proper in the circumstances because [he] **the person** has met the applicable standard of conduct set forth in this section. The determination shall be made by the retirement board by a majority vote of a quorum consisting of members of the retirement board who are not parties to the action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested members of the retirement board so directs, by independent legal counsel (who may but need not be counsel to the retirement system) in a written opinion.

[4.] **5.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the retirement board in advance of the final disposition of the action, suit or proceeding as authorized by the retirement board in the specific case upon receipt of an undertaking by or on behalf of the [member of the retirement board] **person potentially entitled to indemnification hereunder** to repay such amount unless it shall ultimately be determined that [he] **the person** is entitled to be indemnified by the retirement board as authorized in this section.

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