

SENATE BILL 2639

By Watson

AN ACT to amend Chapter 557 of the Private Acts of 1939; as amended by Chapter 76 of the Private Acts of 2004; and any other acts amendatory thereto, relative to the Hamilton County Employees' Retirement Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, such acts comprising the Hamilton County Employees Retirement Act, herein referred to as "the Plan", and any other acts amendatory thereto, are hereby amended as provided in the subsequent sections of this act, generally effective as of July 1, 2010, with specific effective dates for certain sections as may be indicated in such sections.

SECTION 2. This act amends the Plan to comply with changes in the Internal Revenue Code of 1986, herein referred to as the "Code", caused by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA); the Job Creation and Worker Assistance Act of 2002 (JCWAA); the Pension Funding Equity Act of 2004 (PFEA); the American Jobs Creation Act of 2004 (AJCA); the Pension Protection Act of 2006 (PPA); the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART); the Worker, Retiree and Employer Recovery Act (WRERA); and various regulations and related guidance issued by the Internal Revenue Service.

SECTION 3. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended in Section 16 by adding the following language at the end of the section:

The Plan does not permit involuntary distributions of benefits that are immediately distributable, as defined by the Code.

SECTION 4. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended by deleting Section 25 in its entirety and substituting instead the following:

Section 25. Limitations on Benefits.

(a) The limitations of this Section 25 shall apply in Limitation Years beginning on or after July 1, 2002, except as otherwise provided herein.

(b) The Annual Benefit otherwise payable to a Participant at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited, or the rate of accrual reduced, to a benefit that does not exceed the Maximum Permissible Benefit.

(c) If the Participant is, or has ever been, a participant in another qualified defined benefit plan maintained by the County, the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's county-provided benefits under all such defined benefit plans, determined as of the same age, would exceed the Maximum Permissible Benefit applicable at that age, the County will reduce the rate of accrual in this Plan to the extent necessary so that the total Annual Benefit payable at any time under such plans will not exceed the Maximum Permissible Benefit.

(d) The application of the provisions of this Section 25 shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of the County as of the end of the last Limitation Year beginning before July 1, 2007, or such later date as may be applicable to a governmental plan, under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007, satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code section 415 in effect as of the end of the last Limitation Year

beginning before July 1, 2007, or such later date as may be applicable to a governmental plan, as described in Regulation 1.415(a)-1(g)(4).

(e) Definitions (In Addition to Those Capitalized Terms Defined in Section 34).

For purposes of this Section 25, the following terms shall be defined as follows:

(1) "Annual Benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section 25. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date, and shall satisfy the limitations of this Section 25 as of each such date, actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Regulation 1.401(a)-20, Q&A 10(d), and with regard to Regulation 1.415(b)-1(b)(ii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving Spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits, such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits; or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code section 417(e)(3) and would otherwise satisfy the limitations of this Section 25, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 25 applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code section 415(d). For this purpose, an automatic benefit

increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Code section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulation 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with subsections (A) or (B) below.

(A) Benefit Forms Not Subject to Code section 417(e)(3). The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (A) if the form of the Participant's benefit is either (1) a nondecreasing annuity, other than a straight life 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 (2) an annuity that 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 benefit payable before the death of the survivor annuitant, or (b) the cessation or reduction of Social Security supplements or qualified disability payments, as defined in Code section 401(a)(11).

(i) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, or such later date as may be applicable to a governmental plan, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's

form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table, or other tabular factor specified in Section 33 of the Plan for adjusting benefits in the same form; and (II) a five percent (5%) interest rate assumption and the applicable mortality table defined in Section 33 of the Plan for that Annuity Starting Date.

(ii) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, or such later date as may be applicable to a governmental plan, the actuarially equivalent straight life annuity is equal to the greater of (I) the annual amount of the straight life annuity, if any, payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table defined in Section 33 of the Plan for that Annuity Starting Date.

(B) Benefit Forms Subject to Code section 417(e)(3). As a governmental plan there are no benefits subject to Code section 417(e)(3).

(2) "Compensation" shall mean all of a Participant's wages within the meaning of Code section 3401(a) and all other payments of compensation to an employee by the County for which the County is required to furnish the employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052.

Compensation shall be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the

exception for agricultural labor in Code section 3401(a)(2). However, compensation shall exclude amounts paid or reimbursed by the County for moving expenses incurred by an employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are deductible by the employee under Code section 217.

For Limitation Years beginning after December 31, 1991, for purposes of applying the limitations of this section, Compensation for a Limitation Year is the Compensation actually made available during such Limitation Year.

For Limitation Years beginning on or after July 1, 2007, or such later date as may be applicable to a governmental plan, Compensation for a Limitation Year shall also include Compensation paid by the later of two and one-half (2½) months after an employee's severance from employment with the County, or the end of an elected or appointed term as commissioner, or the end of the calendar year that includes the date of the employee's severance from employment, or the end of an elected or appointed term as commissioner with the County, if:

(i) The payment is regular Compensation for services during the employee's regular working hours, or Compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment (or service as commissioner) with the County; or,

(ii) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

(iii) The payment is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered Compensation if paid after severance from employment, or end of term as commissioner, even if they are paid by the later of two and one-half (2½) months after the date of severance from employment or the end of the calendar year that includes the date of severance from employment, except, (i) payments to an individual who does not currently perform services for the County by reason of qualified military service, within the meaning of Code section 414(u)(1), to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the County rather than entering qualified military service; or (ii) compensation paid to a Participant who is permanently and totally disabled, as defined in Code section 22(e)(3), provided, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee, as defined in Code section 414(q), immediately before becoming disabled.

Back pay, within the meaning of Regulation 1.415(c)-2(g)(8) shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

For Limitation Years beginning after December 31, 1997, for purposes of applying the limitations of this Section 25, compensation paid or made available during such Limitation Year shall include any elective deferral, as defined in Code section 402(g)(3), and any amount which is contributed or deferred by the County at the election of the employee and which is not includible in the gross income of the employee by reason of Code section 125 or Code section 457.

For Limitation Years beginning on and after January 1, 2001, for purposes of applying the limitations of this Section 25, Compensation

paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Code section 132(f)(4).

(3) "County" shall, for purposes of this Section 25, mean the County of Hamilton, Tennessee.

(4) "Defined Benefit Compensation Limitation" As a governmental plan, this Plan is not subject to the 100% compensation limit of Code section 415(b).

(5) "Defined Benefit Dollar Limitation" shall mean, as of the general effective date of this act, one hundred ninety-five thousand dollars (\$195,000), the limit for the 2010 fiscal year, as may be automatically adjusted, effective January 1 of each year, by the Secretary of the Treasury under Code section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight-life annuity. A limitation as adjusted under Code section 415(d) will apply to Limitation Years ending with or within the calendar year for which the adjustment applies, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment provided under Code section 415(d) shall apply to Participants who have had a separation from employment.

(6) "Highest Average Compensation" shall mean the average Compensation for the three (3) consecutive Years of Service with the County that produces the highest average. If the Participant has less than three (3) consecutive Years of Service, the highest average will be based on the Participant's longest consecutive period of Service, including fractions of years, but not less than one (1) year.

In the case of a Participant who is rehired by the County after a severance from employment, or a commissioner re-elected or appointed to a nonconsecutive term, the Participant's Highest Average Compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no Compensation from the County (the "break period") and by



treating the years immediately preceding and following the break period as consecutive. A Participant's Compensation for a Year of Service shall not include Compensation in excess of the limitation under Code section 401(a)(17) that is in effect for the calendar year in which such Year of Service begins.

(7) "Limitation Year" shall mean the Plan Year. All qualified plans maintained by the County shall use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, then the new Limitation Year shall begin on a date within the Limitation Year in which the amendment is made.

(8) "Maximum Permissible Amount" shall mean the Defined Benefit Dollar Limitation adjusted where required and to the extent applicable pursuant to subsections (A) and (B) below.

(A) Adjustment for Less Than Ten (10) Years of Participation or Service. If the Participant has less than ten (10) Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction (i) the numerator of which is the number of Years, or part thereof, but not less than one (1) year, of Participation in the Plan, and (ii) the denominator of which is ten (10). This subsection (A) shall not apply to a distribution made on account of the Participant becoming disabled by reason of personal injuries or sickness or as a result of the Participant's death.

(B) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age Sixty-Two (62) or after Age Sixty-Five (65). Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age sixty-two (62) or after age sixty-five (65). If the Annuity Starting Date is before age sixty-two (62), the Defined Benefit Dollar Limitation shall be adjusted under subparagraph (B)(i) below, as modified by subparagraph

(B)(iii). If the Annuity Starting Date is after age sixty-five (65), the Defined Benefit Dollar Limitation shall be adjusted under subparagraph (B)(ii) below, as modified by subparagraph (B)(iii).

(i) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age Sixty-Two (62).

I. Limitation Years Beginning Before July 1, 2007.

If the Annuity Starting Date for the Participant's benefit is prior to age sixty-two (62) and occurs in a Limitation Year beginning before July 1, 2007, or such later date as may be applicable to a governmental plan, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation, adjusted under subsection (8)(A) above for years of participation less than ten (10), if required, with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified and the mortality table, or other tabular factor specified in Section 33 of the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 33 of the Plan.

II. Limitation Years Beginning on or After July 1, 2007.

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-Two (62) and the Age of Benefit Commencement. If the Annuity Starting Date for

the Participant's benefit is prior to age sixty-two (62) and occurs in a Limitation Year beginning on or after July 1, 2007, or such later date as may be applicable to a governmental plan, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation, adjusted under subsection (8)(A) above for years of participation less than ten (10), if required, with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in Section 33 of the Plan, and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date.

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-Two (62) and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age sixty-two (62) and occurs in a Limitation Year beginning on or after July 1, 2007, or such later date as may be applicable to a governmental plan, and the Plan has an

immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (B)(i)(II)A above and the Defined Benefit Dollar Limitation, adjusted under subsection (8)(A) for years of participation less than ten (10), if required, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age sixty-two (62), both determined without applying the limitations of this Section 25.

(ii) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age Sixty-Five (65).

I. Limitation Years Beginning Before July 1, 2007.

If the Annuity Starting Date for the Participant's benefit is after age sixty-five (65) and occurs in a Limitation Year beginning before July 1, 2007, or such later date as may be applicable to a governmental plan, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation, adjusted under subsection (8)(A) above for years of participation less than ten (10), if required, with actuarial equivalence computed

using whichever of the following produces the smaller annual amount: (1) the interest rate and the mortality table, or other tabular factor specified in Section 33 of the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table defined in Section 33 of the Plan.

II. Limitation Years Beginning Before July 1, 2007.

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-Five (65) and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age sixty-five (65) and occurs in a Limitation Year beginning on or after July 1, 2007, or such later date as may be applicable to a governmental plan, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation, adjusted under subsection (8)(A) above for Years of Participation less than ten (10), if required, with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in Section 33 of the Plan, and expressing the Participant's age

based on completed calendar months as of the Annuity Starting Date.

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-Five (65) and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age sixty-five (65) and occurs in a Limitation Year beginning on or after July 1, 2007, or such later date as may be applicable to a governmental plan, and the Plan has an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (B)(i)(II)A and the Defined Benefit Dollar Limitation, adjusted under subsection (8)(A) above for Years of Participation less than ten (10), if required, multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age sixty-five (65), both determined without applying the limitations of this Section 25. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity

payable to the Participant, computed disregarding the Participant's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age sixty-five (65) is the annual amount of such annuity that would be payable under the Plan to a hypothetical participant who is age sixty-five (65) and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this subsection (8)(B), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age sixty-two (62), or between age sixty-five (65) and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code section 417(c) upon the Participant's death.

(C) Minimum benefit permitted. Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

(i) The retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under

this Plan and under all other defined benefit plans, without regard to whether a plan has been terminated, ever maintained by the County do not exceed ten thousand dollars (\$10,000) multiplied by a fraction (I) the numerator of which is the Participant's number of years, or part thereof, but not less than one (1) year of service, not to exceed ten (10) with the County, and (II) the denominator of which is ten (10); and

(ii) The County has not at any time maintained a defined contribution plan in which the Participant participated. For this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under § 401(h), and accounts for postretirement medical benefits established under § 419A(d)(1) are not considered a separate defined contribution plan.

(9) "Year of Participation" shall mean each accrual computation period, computed to fractional parts of a year, for which the following conditions are met: (i) the Participant is credited with at least the number of hours of service for benefit accrual purposes, required under the terms of the Plan in order to accrue benefit service, and (ii) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one (1) day of the period of benefit service. If these two (2) conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code section 415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Participant 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 (12) month period.

(f) Notwithstanding any provision of this Section 25, the application of this section shall be subject to such rules as may be prescribed by the Secretary of the Treasury.

SECTION 5. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended by deleting Section 26 in its entirety and substituting instead the following:

Section 26. Limitation on Earnings.

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

(b) For Plan Years beginning after December 31, 2001, the annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year shall not exceed two hundred thousand dollars (\$200,000), as may be adjusted as set forth below. Annual compensation means compensation during the Plan Year or such other consecutive twelve-month period over which compensation is otherwise determined under the Plan, known as the determination period. Should the Plan use annual compensation for periods prior to January 1, 2002, to determine benefit accruals for Plan Years beginning after December 31, 2001, the annual compensation limit used for such periods shall be two hundred thousand dollars (\$200,000). The two hundred thousand dollar (\$200,000) limit on annual compensation in this subsection (b) shall be adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B), the cost-of-living adjustment effective January 1, 2010, is two hundred forty-five thousand dollars (\$245,000). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

SECTION 6. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended by deleting Section 27 in its entirety and substituting instead the following:

Section 27. Minimum Distribution.

(a) Final Regulations Incorporated By Reference. Notwithstanding any provision of the Plan to the contrary, with respect to distributions under the Plan made for calendar years beginning on or after January 1, 2006, the Plan will apply the minimum distribution requirements of Code section 401(a)(9) in accordance with the Regulations under Code section 401(a)(9) that were finalized on June 15, 2004, and amended September 8, 2009, which are hereby incorporated by reference.

Furthermore, the Plan shall comply with any and all provisions interpreting Code section 401(a)(9) that are prescribed by the Commissioner of the Internal Revenue Service.

(b) Subject to the joint and survivor annuity requirement of the Plan, the requirements of this Section 27 will take precedence over any inconsistent provisions of the Plan.

(c) All distributions required under this Section 27 will be determined and made in accordance with Code section 401(a)(9) and the Regulations thereunder, including the incidental death benefit requirement in Code section 401(a)(9)(G).

(d) Notwithstanding any other provision of this Section 27, other than subsection (c), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

(e) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date. "Required beginning date" means the April 1 of the calendar year following the later of:

- (1) The calendar year in which the Participant attains age seventy and one-half (70 ½), or

(2) The calendar year in which the Participant retires.

(f) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½), if later.

(2) If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 27(f), other than subsection (1), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 27(f) and subsections (n),(o) and (p), distributions are considered to begin on the Participant's required beginning date, or, if Section 27(f)(4) applies, the date distributions are required to begin to the surviving Spouse under Section 27(f)(1). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date, or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 27(f)(4), the date distributions are considered to begin is the date distributions actually commence.

(g) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, distributions will be made in accordance with the subsequent provisions of this Section 27. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and Regulations thereunder. Any part of the Participant's interest which is in the form of an individual account described in Code section 414(k) will be distributed in a manner satisfying the requirements of Code section 401(a)(9) and the Regulations thereunder that apply to individual accounts.

(h) General Annuity Requirements. A Participant who is required to begin payments as a result of attaining his or her required beginning date, whose interest has not been distributed in the form of an annuity purchased from an insurance company or in a single sum before such date, may receive such payments in the form of annuity payments under the Plan. Payments under such annuity must satisfy the following requirements:

- (1) The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;
- (2) The distribution period will be over a life, or lives, or over a period certain not longer than the period provided for under the terms of this Section 27;
- (3) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (4) Payments will either be nonincreasing, or increase only as follows:
  - (A) By an annual percentage increase that does not exceed the annual percentage increase in an eligible cost-of-living index for a twelve-month period ending in the year during which the increase occurs or the prior year;

(B) By a percentage increase that occurs at specified times, for example, at specified ages, and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the Annuity Starting Date, or if later, the date of the most recent percentage increase; except that in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(C) To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 27(k) dies or is no longer the Participant's beneficiary pursuant to a court order recognized by the Plan;

(D) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death;

(E) To pay increased benefits that result from a plan amendment;

(F) By a constant percentage, applied not less frequently than annually, at a rate that is less than five percent (5%) per year;

(G) To provide a final payment upon the death of the Participant that does not exceed the excess of the actuarial present value of the Participant's accrued benefit, within the meaning of Code section 411(a)(7), calculated as of the Annuity Starting Date using the applicable interest rate and the applicable mortality table under Code section 417(e), or, if greater, the total amount of employee contributions, over the total of payments before the death of the Participant; or

(H) As a result of dividend or other payments that result from actuarial gains, provided:

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

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

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

(iv) The assumed interest rate used to calculate such actuarial gains is not less than three percent (3%); and

(v) The annuity payments are not also being increased by a constant percentage as described in this Section 27.

(i) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date, or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 27(f)(1) or (2), is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

(j) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

Notwithstanding the preceding, the Plan will not fail to satisfy the requirements of this Section 27 and Code section 401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar

year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under this Section 27.

(k) Joint Life Annuities Where the Beneficiary Is the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and the Participant's Spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the periodic annuity payment payable to the survivor does not at any time on and after the Participant's required beginning date exceed the annuity payable to the Participant. In the case of an annuity that provides for increasing payments, the requirement of this subsection (k) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the Participant and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and the Participant's Spouse and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(l) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the Participant's required beginning date will satisfy the conditions of this subsection (l). The periodic annuity payment payable to the survivor must not, at any time on and after the Participant's required beginning date, exceed the applicable percentage of the annuity payment payable to the Participant using the table set forth in Q&A-2(c)(2) of Regulation 1.401(a)(9)-6. The applicable percentage is based on the adjusted

participant/beneficiary age difference. The adjusted participant/beneficiary age difference is determined by first calculating the excess of the age of the Participant over the age of the beneficiary based on their ages on their birthdays in a calendar year. If the Participant is younger than age seventy (70), the age difference determined in the previous sentence is reduced by the number of years that the Participant is younger than age seventy (70) on the Participant's birthday in the calendar year that contains the Annuity Starting Date. In the case of an annuity that provides for increasing payments, the requirement of this subsection (l) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the Participant and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(m) Period Certain Annuities. Unless the Participant's Spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Regulation 1.401(a)(9)-9 for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Regulation 1.401(a)(9)-9 plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's Spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subsection (m), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Regulation 1.401(a)(9)-9, using the Participant's and Spouse's attained ages as



of the Participant's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.

(n) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 27(f)(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:

(1) Unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(2) If the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

(o) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(p) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section 27(p) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 27(f).

(q) Definitions.

(1) Actuarial Gain. The term "actuarial gain" as used in this Section 27 means the difference between an amount determined using the actuarial

assumptions, that is, investment return, mortality, expense, and other similar assumptions, used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(2) Designated Beneficiary. The term “designated beneficiary” as used in this Section 27 means the individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Code section 401(a)(9) and Regulation 1.401(a)(9)-1, Q&A-4.

(3) Distribution calendar year. The term “distribution calendar year” as used in this Section 27 means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s required beginning date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 27(f) hereof.

(4) Eligible Cost-of-Living Index. The term “eligible cost-of-living index” as used in this Section 27 means an index described below:

(a) Consumer price index that is based on prices of all items, or all items excluding food and energy, and issued by the Bureau of Labor Statistics, including an index for a specific population, such as urban consumers or urban wage earners and clerical workers, and an index for a geographic area or areas, such as a given metropolitan area or state; or

(b) A percentage adjustment based on a cost-of-living index described in subparagraph (a) above, or a fixed percentage, if less; provided however, in any year when the cost-of-living index is lower than

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

(i) The cost-of-living index for that year;

(ii) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year, reduced by any amount previously utilized under this subparagraph (b); and

(iii) If provided by this Plan, as a governmental plan, a percentage adjustment based on the increase in compensation for the position held by the Participant at the time of retirement.

(5) Life expectancy. The term "life expectancy" as used in this Section 27, means the life expectancy as computed by use of the Single Life Table in Regulation 1.401(a)(9)-9.

SECTION 8. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended by deleting Section 28 in its entirety and substituting instead the following:

Section 28. Right to Direct Rollover. This section applies to distributions made on or after January 1, 2002. 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 Pension Commission, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Eligible rollover distribution: An "eligible rollover distribution" is 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: 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; any distribution to the extent such distribution is required under

Code section 401(a)(9); and the portion of any distribution that is not includible in gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(b) Eligible retirement plan: An “eligible retirement plan” is any of the following arrangements that accept the distributee’s eligible rollover distribution:

(1) An individual retirement account described in Code section 408(a);

(2) An individual retirement annuity described in Code section 408(b);

(3) An annuity plan described in Code section 403(a);

(4) A qualified trust described in Code section 401(a);

(5) An annuity contract described in Code section 403(b);

(6) An eligible plan under Code section 457(b) which 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 Plan; and

(7) For distributions made after December 31, 2007, a Roth IRA described in Code section 408A(b).

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 domestic relations order accepted by the Pension Commission.

(c) Distributee: A “distributee” includes an employee or former employee eligible for benefits under the Plan. In addition, the employee’s or former employee’s surviving Spouse and the employee’s or former employee’s Spouse or former Spouse who is the alternate payee under a domestic relations order accepted by the Pension Commission, are distributees with regard to the interest of the Spouse or former Spouse.

Effective for distributions made after December 31, 2010, a “distributee” also includes a Participant’s nonspouse beneficiary. However, in the case of a nonspouse beneficiary, the rollover must be a direct rollover and only can be made to an individual retirement account or annuity described in Code section 408(a) or 408(b) (“IRA”) that is established on behalf of the beneficiary and will be treated as an inherited IRA pursuant to Code

section 402(c)(ii). Also, in the case of a nonspouse beneficiary, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18. If such distribution is made prior to January 1, 2010, it is not subject to the direct rollover requirements of Code section 401(a)(31), the notice requirements of Code section 402(f) or the mandatory withholding requirements of Code section 3405(c). If a nonspouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a sixty-day (nondirect) rollover.

If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary with the meaning of Code section 401(a)(9)(E).

(d) Direct rollover: A direct rollover is a payment by the Plan to an eligible retirement plan specified by the distributee and as allowed by law.

SECTION 9. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended in Section 29 by adding the following language at the end of the section:

Death benefits. In the case of a death or disability occurring on or after January 1, 2007, if a Participant dies while performing qualified military service, as defined in Code section 414(u), the survivors of the Participant are entitled to any additional benefits provided under the Plan, other than benefit accruals relating to the period of qualified military service, as if the Participant had resumed and then terminated employment on account of death.

Differential wage payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code section 3401(h)(2), shall be treated as an employee of the County making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

SECTION 10. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended by deleting Section 33 in its entirety and substituting instead the following:

Section 33. Actuarial Equivalent

(a) 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. Notwithstanding the foregoing, effective for distributions with Annuity Starting Dates on or after December 31, 2002, the applicable mortality table and applicable interest rate used for purposes of adjusting any benefit or limitation under Code section 415(b)(2)(B), (C), or (D) as set forth in Section 25 of the Plan shall be the table(s) and interest rates set forth in subsections (b) and (c) below, if such actuarial equivalent amount produces a greater benefit than that determined by the factors set forth in this subsection (a).

(b) For purposes of this subsection (b), the "applicable mortality table" means, for distributions having an Annuity Starting Date of January 1, 2008, or later, the applicable annual mortality table prescribed by Code section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67. For distributions having an Annuity Starting Date prior to January 1, 2008, and after January 1, 2002, the applicable mortality table is the table prescribed in Revenue Ruling 2001-62.

(c) For purposes of subsection (c), the "applicable interest rate" means, for distributions having an Annuity Starting Date prior to January 1, 2008, and after January 1, 2002, the annual rate of interest on 30-year Treasury securities of the United States for the second calendar month preceding the first day of the Plan Year during which the Annuity Starting Date occurs. For distributions having an Annuity Starting Date of January 1, 2008, or later, the "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of Code section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the Annuity Starting Date occurs (stability period). For this purpose, the

first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code section 430(h)(2)(C) if:

(1) Code section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and

(2) Code section 430(h)(2)(G)(i)(II) were applied by substituting “Section 417(e)(3)(A)(ii)(II)” for “Section 412(b)(5)(B)(ii)(II),” and

(3) The applicable percentage under Code section 430(h)(2)(G) is treated as being twenty percent (20%) in 2008, forty percent (40%) in 2009, sixty percent (60%) in 2010, and eighty percent (80%) in 2011.

Notwithstanding the foregoing, except as provided in the Regulations, if a Plan amendment, including amendments made by this act, changes the time for determining the “applicable interest rate”, including an indirect change as a result of a change in the Plan Year, any distribution for which the Annuity Starting Date occurs in the 1-year period commencing at the time the Plan amendment is effective, if the amendment is effective on or after the adoption date, must use the interest rate as provided under the terms of the Plan after the effective date of the amendment, determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the Plan amendment is adopted retroactively, that is, the amendment is effective prior to the adoption date, the Plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one (1) year after the adoption date.

SECTION 11. Chapter 557 of the Private Acts of 1939, as amended by Chapter 76 of the Private Acts of 2004, and any other acts amendatory thereto, is amended by deleting Section 34 in its entirety and substituting instead the following:

Section 34. Definitions Applicable to the Plan:

(1) “Annuity Starting Date” shall mean the first day of the first period for which an amount is paid as an annuity or any other form;

(2) “Code” means the United States Internal Revenue Code of 1986, as may be amended from time to time. 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;

(3) “Participant” means an employee or commissioner of Hamilton County participating in the Plan in accordance with the provisions the Plan;

(4) “Plan” means the Hamilton County Employees’ Retirement Plan, as established and maintained by legislation enacted by the General Assembly of the State of Tennessee and approved by the Hamilton County legislative body;

(5) “Plan Year” means each twelve-month period commencing July 1 and ending on the next June 30;

(6) “Regulations” mean the Income Tax Regulations promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time, including temporary regulations; and

(7) “Spouse” means the person who is legally married to a Participant as determined under the laws of the State of Tennessee.

SECTION 12. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Hamilton County. Its approval or rejection shall be proclaimed by the presiding officer of the legislative body and certified to the Secretary of State.

SECTION 13. For the purpose of approving or rejecting the provisions of this act, it shall be effective up on becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 12.