

# MANCHESTER EMPLOYEES' CONTRIBUTORY RETIREMENT SYSTEM



## --- Chapter 218/Plan Document ---

2014

### Legislative History: (By Chapter Reference)

**(2002)** 194:1 Permanent Retirement System for Employees of the City of Manchester. 1973, 218 as amended by 1976, 24 and 1999, 103, is repealed and reenacted...

**(2002)** 147:1 Definition; Normal Retirement Date. Amend 1973, 218:1, XII...

147:4 Definitions; Normal Retirement Date; HB 1310 Contingency Provision. 1973, 218:4, XIII, as amended by HB 1310 of the 2002 legislative session, is repealed and reenacted...

147:5 Retirement Benefits; HB 1310 Contingency Provision. 1973, 218:12, I, as amended by HB 1310 of the 2002 legislative session, is repealed and reenacted...

147:6 Early Retirement Option; HB 1310 Contingency Provision. 1973, 218:14, I, as amended by HB 1310 of the 2002 legislative session, is repealed and reenacted...

**(2003)** 102:2 Board of Trustees; Vacancy. Amend 1973, 218:5, as amended by 2002, 194:1...

102:1 New Paragraph; Manchester Retirement System; Contributions by Employees; Additional Contributions. Amend 1973, 218:9, as amended by 2002, 194:1

**(2003)** 16:1 Manchester Retirement System; Death Benefits Provisions. 1973, 218:16, as amended by 1999, 103:5 and 2002, 194:1, is repealed and reenacted...

16:2 Manchester Retirement System; Designation of Beneficiaries; Reference Changed. Amend 1973, 218:19, as amended by 2002, 194:1...

**(2004)** 159:1 New Paragraph; Manchester Retirement System; Optional Retirement Benefit. Amends 1973, 218:12, as amended by 2002, 194:1, by inserting new language after paragraph V

**(2005)** 40:1 Employees to Whom the Act Applies. Amend 1973, 218:7, I, as amended by 2002, 194:1

40:2 Service Credit and Service Buyback. Amend 1973, 218:10, I, as amended by 2002, 194:1

40:3 Retirement Benefit Calculation. Amend 1973, 218:12, V(a), as amended by 2002, 194:1

40:4 Optional Retirement Benefit. Amend 1973, 218:12, VI, as amended by 2002, 194:1 and 2004, 159:1

40:5 Disability Retirement Benefit Calculation. Amend 1973, 218:15, II(a), as amended by 2002, 194:1

40:6 Disability Benefits; Medical Examination. Amend 1973, 218:15, IV, as amended by 2002, 194:1

40:7 Adjustments. Amend 1973, 218:20, as amended by 2002, 194:1

40:8 Retirement System Employees

40:9 Effective Date. July 16, 2005

**(2005)** 41:1 New Section; Manchester Retirement System; Medical Insurance Coverage. Amend 1973, 218, as amended by 2002, 194, by inserting language after section 27:

**(2006)** 115:1 Manchester Retirement System; Retirement Benefits. Amend 1973, 218:12, IV, as amended by 2002, 194:1

115:2 Manchester Retirement System; Optional Benefit. Amend 1973, 218:12, VI, as amended by 2002, 194:1, 2004, 159:1, and 2005, 40:4

115:3 Manchester Retirement System; Overpayments. Amend 1973, 218:23, as amended by 2002, 194:1

115:4 Manchester Retirement System; Service Buybacks. Amend 1973, 218:10, III, as amended by 2002, 194:1

115:5 New Sections; Service Credit; Spousal Acknowledgment. Amend 1973, 218 as amended by 2002, 194 and 2005, 41 by inserting new sections after section 28

115:6 Effective Date. This act shall take effect upon its passage. (May 9, 2006)

**(2006)** 224:1 New Section; Manchester Employees' Contributory Retirement System; Acceptance of Certain Tax Sheltered Funds for Allowable Service Purchases. Amend 1973, 218, as amended by 2002, 194 and 2006, 115, by inserting new sections after section 30

224:2 Effective Date. This act shall take effect upon its passage. (June 1, 2006)

**(2007)** 45:1 Manchester Retirement System: Accidental Death Benefits. Amend 1973, 218:16, I(b), as amended by 2002, 194:1 and 2003, 16:1

45:2 Effective Date. This act shall take effect upon its passage. (May 21, 2007)

**(2007)** 97:1 New Section; Manchester Employees' Contributory Retirement System; Continued Membership. Amend 1973, 218, as amended by 2002, 194, 2006, 115, and 2006, 224, by inserting after section 31 the following new section:

97:4 Effective Date. This act shall take effect upon its passage, June 11, 2007

**(2008)** 90:1 New Paragraph; Manchester Employees' Contributory Retirement System; Spouse. Amend 1973, 218:4 as amended by 2002, 194:1 by inserting a definition as section XXI after paragraph XX:

90:2 Board Duties; Reference Removed. Amend the introductory paragraph of 1973, 218:6, I as amended by 2002, 194:1 to strike references to finance director as treasurer.

90:3 Employee Eligibility. Amend 1973, 218:7 as amended by 2002, 194:1 and 2005, 40:1 adding sections IV through VIII to establish minimum participation standards:

90:4 Contributions. Amend 1973, 218:9, II as amended by 2002, 194:1 to ratify adoption of section 414(h) retroactive to January 1, 1986:

90:5 Repeal. 1973, 218:15, VI, as amended by 2002, 194:1, relative to worker's compensation offset provisions applied to disabled participants.

90:6 Effective Dates. I. Section 3 of this act shall take effect 90 days after its passage. II. The remainder of this act shall take effect 30 after its passage. Approved: May 21, 2008 Effective Date: I. Section 3 shall take effect August 19, 2008. II. Remainder shall take effect June 20, 2008.

**(2009)** 151:1 Manchester Employees' Contributory Retirement System; Clarifying Benefits Upon Termination of Employment Prior to Normal Retirement Date. Amend 1973, 218:11 as amended by 202, 194:1.

151:2 Effective Date. This act shall take effect July 8, 2009.

**(2011)** 21:1 Benefits Upon Death of a Member, repeals and reenacts 1973, 218:16, as amended by 2002, 194; 2003, 16:1, and 2007, 45:1.

21:2 Effective Date. April 25, 2011.

**(2014)** 108:1 Manchester Employees' Contributory Retirement System; Spouse. 1973, 218:4, XXI as amended by 2002, 194:1 and 2008, 90:1 repealed and reenacted.

108:2 Manchester Employees' Contributory Retirement System; School District Employee Eligibility. 1973, 218:7, IV(b) as amended by 2002, 194:1 and 2008, 90:3 amended.

108:3 Effective Date. June 11, 2014

Selected additions and revisions are shown in ***bold italics***. For historical reference purposes, certain repealed sections are shown in smaller font with strikethrough.

\*\*\*Earlier versions of Chapter 218 are available from the MECRS upon request\*\*\*

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**AN ACT relative to the city of Manchester's contributory retirement system.**

194:1 Permanent Retirement System for Employees of the City of Manchester. 1973, 218 as amended by 1976, 24 and 1999, 103, is repealed and reenacted to read as follows:

**218:1 Short Title.**

This act shall be known as the "Manchester Employees' Contributory Retirement System Act."

**218:1-a Purpose of Act.**

The purpose of this act is to amend and restate in its entirety the June 14, 1973 law, known as chapter 218 of the laws of 1973 which established the Manchester employees' contributory retirement system providing retirement benefits to employees of the city of Manchester, New Hampshire, as amended in 1976 by chapter 24, and in 1999 by chapter 103.

**218:2 Transfer of Members, Retirement Fund, and Benefits.**

Except as provided herein, the passage of this act shall not terminate or modify the benefits accrued by existing members of the Manchester employees' contributory retirement system under 1973, 218 as amended by 1976, 24 and 1999, 103.

**218:3 Internal Revenue Code Qualification.**

The retirement system established in this act is intended to create a tax-qualified governmental retirement plan under sections 401(a) and 414(d) of the Code as amended.

**218:4 Definitions.**

The following terms as used in this act shall have the following meanings unless a different meaning is plainly indicated by the context:

I. "Annualized disability earnings" means the earnings of the member for all weeks of service until the date of disability divided by the number of weeks of service, multiplied by 52.

II. "Beneficiary" means the person to whom the share of a deceased member's benefit is payable, subject to the provisions of section 19.

III. "Break in service" means any period of time in which an employee is not credited with employment with the city.

IV. "Buyback interest" means the rate of interest determined from time to time by the retirement board compounded annually on the last day of the calendar year or to the date of payment by the member.

V. "City" means the city of Manchester, New Hampshire.

VI. "Code" means the Internal Revenue Code of 1986, as amended.

VII. "Disabled member" means a member who is receiving disability benefits under the provisions of section 15.

VIII. "Earnings" means the total salary or wages of a member for the member's employment with the city, including all grants and allowances for maintenance at such figures as may be determined by the retirement board. For members whose retirement date is after July 1, 1996, and members who on July 1, 1996 and thereafter terminated city employment and elected to defer their benefits until their normal retirement date but had not yet reached their normal retirement date, earnings shall include unused sick time included in the member's salary or wages at the member's date of termination of city employment. For members whose retirement date is after December 1, 1997, and members who on December 1, 1997 and thereafter terminated city employment and elected to defer their benefits until their normal retirement date but had not yet reached their normal retirement date, earnings shall include unused vacation time included in the member's salary or wages at their date of termination of city employment.

IX. "Effective date" means January 1, 1974.

X. "Final average earnings" means the greater of (a) the average annual earnings received by a member during the 3 highest calendar years during the 10 years preceding the member's normal retirement date, date of actual retirement or date of termination of employment, or (b) the average annual earnings received by a member during the highest 36 consecutive calendar months during the 10 years preceding the member's normal retirement date, date of actual retirement or date of termination of employment. The 3 highest years or highest 36 consecutive months shall be selected by the member, it being the intent and purpose of this method of computing final average earnings to afford the highest benefits to the member. If a member has not worked 10 years at the time of the commencement of benefits, the benefit shall be based upon the earnings during the greater of the highest 36 consecutive months or the 3 highest calendar years. This section shall be effective for members whose retirement date is after January 1, 2003.

XI. "Member" means any employee of the city who becomes covered under the retirement system as described in this act.

XII. "Normal retirement benefit" means the retirement benefit as described in section 12 of the act.

147:4 Definitions; Normal Retirement Date; HB 1310 Contingency Provision. 1973, 218:4, XIII, as amended by HB 1310 of the 2002 legislative session, is repealed and reenacted to read as follows:

XIII. "Normal retirement date" shall mean the first day of the month coinciding with or next following a member's sixtieth birthday.

XIV. "Regular interest" means the interest at the rate determined from time to time by the retirement board compounded annually on the last day of the calendar year or to the date of payment in the case of a refund of contributions.

XV. "Retirement board" and "the board" means the board of trustees created under this act responsible for the administration of the Manchester employees' contributory retirement system and such other duties as set forth herein.

XVI. "Retirement date" means the date the payment of retirement benefits commences in accordance with section 12, paragraph II of this act.

XVII. "Retirement fund" means the trust established and funded for the payment of retirement benefits to city employees pursuant to this act.

XVIII. "Retirement system" means the plan for providing retirement benefits to city employees as established by this act.

XIX. "Service" means employment with the city until termination of employment.

XX. "Service buyback" means the purchase of service credit under the retirement system.

XXI. "Spouse" means a person legally married to a member.

**218:5 Retirement Board Personnel and Powers.**

I. Management of the retirement system shall be vested in the retirement board consisting of 7 members, composed as follows: the city finance director; a person appointed by the board of aldermen, 2 citizens of the city, one appointed by the mayor, one elected by the employee members, neither of whom shall be an officer or employee of the city or a member of any commission of the city; 2 members who are employees of the city, who are members of the retirement system and who shall be elected by the members. All members, including retired members and members with deferred benefits shall be permitted to vote in the elections for the board positions. Spouses of deceased members shall not be permitted to vote in the elections for the board positions. The mayor shall be an ex-officio member of the board who shall have a vote only to break a tie.

II. The finance director shall serve as a member of the retirement board during his or her term of office. The mayor shall serve as a member of the retirement board during his or her term of office. The member of the retirement board appointed by the board of aldermen shall serve a term of one year from the effective date of this act, provided his or her successors shall be appointed for 3-year terms and the term of office of each member shall continue until his or her successor is appointed and qualified. The citizen appointed by the mayor shall serve a term of 2 years from the effective date of this act, provided his or her successors shall be appointed for terms of 3 years and the term of office of each such member of the board shall continue until his or her successor is appointed and qualified. The 2 members of the board who are employees of the city shall be elected for terms of one year and 2 years respectively from the effective date of this act, provided their respective successors shall be elected for 3-year terms and the term of each office of each such member of the board shall continue until his or her successor is appointed and qualified. The citizen member of the board elected by the employees shall be elected for a term of 3 years from the effective date of this act, provided that his or her successors shall be elected for 3-year terms and the term of office for such member of the board shall continue until his or her successor is elected and qualified. The members of the retirement board shall serve without compensation. Employees of the retirement system are prohibited from serving on the retirement board.

III. A majority of voting members of the retirement board (4 members) shall constitute a quorum for the transaction of retirement board business; however, the mayor, as an ex-officio non-voting member of the retirement board shall not be counted towards such quorum. Retirement board meetings cannot begin, nor can business be transacted, until the chairperson ascertains a quorum is present. For the purposes of a retirement board meeting, until a quorum is present, no debate or motion shall be in order except to recess to locate absent members of the board. All matters coming before any meeting of the retirement board or its committees shall be decided by a majority of those retirement board members present and entitled to vote, a quorum being ascertained. Proxies shall not be permitted for voting or for obtaining a quorum.

102:2 Board of Trustees; Vacancy. Amend 1973, 218:5, as amended by 2002, 194:1 to read as follows:

IV. In the event of a vacancy on the retirement board, such vacancy shall be filled in the same manner as the member to be succeeded was appointed or elected and for the remainder of the unexpired term. Any person who is vacating a trustee position on the board may, if the trustee's circumstances permit, continue to represent the membership as a trustee for a period not to exceed 6 months, or, until a successor is appointed or elected, whichever period is shortest.



**218:6 Retirement Board Duties.**

90:2 Board Duties; Reference Removed. Amend the introductory paragraph of 1973, 218:6, I as amended by 2002, 194:1 to read as follows:

I. Contributions received by the retirement system pursuant to this act shall be deposited into the retirement fund. ~~The finance director of the city shall be the treasurer of the retirement fund which shall be a trust.~~ The retirement board shall be trustee of the retirement fund and shall have the obligation of a fiduciary of the retirement system and its members and beneficiaries. In the fulfillment of its duties and responsibilities hereunder, the retirement board shall act solely in the interests of the retirement system, the members, and the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. As trustee, the retirement board shall hold legal title to all securities and assets of the retirement system and shall have full control and management of them with the power to invest and reinvest the same in accordance with the terms, conditions, limitations, and restrictions imposed by the general statutes of the state of New Hampshire governing the investment of trust funds. In addition to those powers, the retirement board, as trustee, shall also have the power:

- (a) To collect and receive any and all monies and other property due and to give full discharge and acquaintance therefore;
- (b) To appoint advisory committees to aid the retirement board in its duties under this section or to delegate to any corporate fiduciary or an insurance company within or without the state who may or may not be the custodian of stocks and securities, the power and discretion to make decisions with regard to the purchase or sale of any legal object of investment and to take any action necessary to affect decisions by or on behalf of the retirement system with the same legal effect as if performed by the retirement board;
- (c) To authorize the payment of compensation to an agent for retirement fund management services;
- (d) To settle or compromise any claims, debts or damages due or owing to or from the retirement system, and to commence or defend suits or legal proceedings whenever, in its judgment, any interest of the retirement system so requires employing suitable agents and counsel for this purpose and paying their reasonable expenses and compensation;
- (e) To maintain records of receipts and disbursements and to pay benefits required under the retirement system to eligible members, or, in the event of their death, to their beneficiaries;
- (f) To generally do all other things necessary and proper to carry out the purposes of this act.

II. The retirement board shall take all actions necessary for the proper administration of the retirement system, including operating an office in a location convenient and accessible to members, and hiring, dismissing, and determining the compensation of employees. The retirement board shall engage expert actuarial, auditing, and other professional service providers when, in the judgment of the board, it is advisable. The retirement board shall submit an annual report and audited financial statements to the city board of mayor and aldermen.

III. The retirement board shall administer the retirement system in accordance with this act and shall have discretionary and final authority to determine all questions concerning eligibility and benefits, to interpret and construe all terms of the act, including any uncertain terms, and to resolve any disputes arising from, and all questions concerning, administration of the retirement system. Any determination made by the retirement board shall be given deference, if it is subject to judicial

review, and shall be overturned only if it is arbitrary or capricious. No action taken by the retirement board under this act shall be construed or relied upon as precedent for similar action under similar circumstances.

IV. The retirement board's duties shall also include the general administration of the retirement system, including, but not limited to, the following:

- (a) To compute, determine, and certify the amount and kind of benefits to which any member shall be entitled hereunder;
- (b) To authorize and direct all disbursements;
- (c) To maintain all necessary records for the administration of the retirement system;
- (d) To interpret the provisions of the retirement system;
- (e) To compute and certify to the city from time to time the sums of money necessary to be contributed to the retirement system;
- (f) To assist any member regarding that member's rights, benefits, or elections available under the retirement system.

V. The retirement board shall produce a summary plan description, bylaws, and administrative rules which are not inconsistent with this act. The summary plan description shall be a summary of the administrative rules and important provisions of this act, and shall be distributed to new members. Upon any material amendment of the act or administrative rules a summary of the changes or, at the discretion of the retirement board, a new summary plan description shall be distributed to all members. The administrative rules shall explain the requirements of this act, including the time frames and procedures that members must follow in placing claims for retirement benefits. The bylaws shall provide rules to govern the meetings held by the retirement board and shall contain a policy to prevent apparent or actual conflicts of interest. The administrative rules and bylaws shall be available for review by members at the retirement system's office during normal business hours.

VI. In the event any claim, suit, or proceeding brought regarding the retirement system, to which any member of the retirement board or retirement system employees are made a party, is resolved in favor of the retirement system, board member, or retirement system employee, the board member or retirement system employee shall be entitled to be reimbursed from the retirement fund for any and all costs, attorney's fees, and other reasonable expenses pertaining to said claim, suit, or proceeding personally incurred by them.

VII. The retirement system shall indemnify the members of the retirement board and employees of the retirement system for liability they incur in administering the retirement system and managing the retirement fund. The opinion of the retirement board's counsel shall be full and complete protection with respect to any action taken by the retirement board, or any member thereof, if taken in good faith and in accordance with such opinion. Provided, however, the retirement system shall not indemnify the retirement board or any members thereof, for fraud, willful or deliberate misconduct, or gross negligence.

VIII. The retirement board shall charge all administrative costs to the retirement fund. No city funds shall be appropriated for retirement system administrative costs. Such administrative costs include any expenses incident to administering the retirement system including, but not limited to, personnel expenses, rental and/or facility charges, office supplies and equipment, fees of accountants,

actuaries, counsel, investment managers, and other professionals, specialists and their agents, as well as other costs of administering the retirement system.

**218:7 Employees to Whom the Act Applies.**

40:1 Employees to Whom the Act Applies. Amend 1973, 218:7, I, as amended by 2002, 194:1, to read as follows:

90:3 Employee Eligibility. Amend 1973, 218:7 as amended by 2002, 194:1 and 2005, 40:1 to read as follows:

I. ~~All full-time and permanent part-time~~ **Eligible** employees of the city, including elected and appointed officials of the city, shall participate in the retirement system and receive benefits as provided by the act. For purposes of this act, employees of the Manchester school district, Manchester public library, and the Manchester contributory retirement system shall be city employees. Participation in the retirement system shall be a condition of employment with the city. The following employees of the city shall not be eligible to participate in the retirement system:

(a) Temporary employees;

(b) Members of boards and commissions who are not ~~part-time or full-time employees of~~ **otherwise eligible as a result of employment by** the city;

(c) Members of the fire and police departments who are eligible to participate in a state-administered retirement system;

(d) Persons who are eligible to participate in the New Hampshire retirement system[-]; and

(e) Trustees of the Manchester contributory retirement system who are not otherwise eligible as a result of employment by the city.

II. Temporary employees of the city who become ~~permanent employees~~ **eligible to participate under paragraph IV** without incurring a break in service are eligible to participate in the retirement system as of their original date of hire if they complete a service buyback.

III. Any eligible employee in the employment of the city on January 1, 1974, who elected not to participate shall only be admitted to the retirement system upon completion of an application for participation, majority consent of the retirement board, passing a prescribed physical examination, and completion of a service buyback.

IV. Employees shall become eligible to participate as follows:

(a) Employees of the city shall be eligible if they are employed 32 hours or more per week on a regularly scheduled basis of principal employment wherein the employee meets criteria established by the city for at least one other employee benefit, limited to vacation/sick leave pay or health insurance benefits, except that where no other benefits are provided, an employee shall be eligible based solely on 32 hours or more per week of employment; and

(b) Manchester school district employees shall be eligible if contracted for at least 30 hours per week, for a contract year, except in the case of school food and nutrition staff who must work 20 hours per week, for a contract year.

V. Any member whose hourly work status is subsequently reduced to a level below the minimum participation standards established in subparagraph IV(a) or (b), shall be ineligible for continued membership participation. Any member who remains in such status for a period of 90 days, and who has less than 5 years' accrued service, shall be entitled to receive a refund of accumulated contributions pursuant to section 11.

VI. Any member with more than 5 years of service, who continues to be ineligible for participation after the initial 90 day period described in paragraph IV, shall automatically be entitled to a vested deferred retirement allowance, as provided by paragraph II of section 11. In lieu of a monthly retirement benefit, such member may elect to receive a refund of accumulated contributions pursuant to paragraph I of section 11.

VII. Any employee who re-qualifies for membership by meeting the minimum participation standards provided in subparagraph IV(a) or (b) and who received a refund of accumulated contributions pursuant to paragraph V, may restore full service credit by reinstating the funds in accordance with paragraph III of section 10. Upon re-qualification for membership by an employee with 5 or more years of service, any notice of intention to receive a vested deferred retirement benefit form filed in accordance with paragraph II of section 11, shall be considered invalid.

VIII. Any actively contributing member of the system as of January 1, 2008 shall continue to be eligible for membership in the Manchester employees' contributory retirement system and shall not be affected by paragraph IV. Any such member who meets the qualifications established in paragraph IV, who later experiences a reduction in hours below the standards established in paragraph IV, shall be disqualified from continued participation. Any member who remains in that status for a period of 90 days shall then be entitled to either a vested deferred retirement benefit or a refund of contributions as outlined in paragraphs V or VI.

#### **218:8 Contributions by the City.**

The city shall appropriate annually to the retirement board the amounts required to fund the benefits set forth in the act as determined by the retirement board on the basis of an actuary's valuation, which shall be based on sound actuarial funding methods, assumptions, and principles.

#### **218:9 Contributions by Employees.**

I. The rate of contributions by each member participating in the retirement system shall be 3.75 percent of that portion of earnings received during each calendar year or portion thereof.

90:4 Contributions. Amend 1973, 218:9, II as amended by 2002, 194:1 to read as follows:

II. **(a)** The earnings of each member participating in the retirement system shall be reduced by the contribution rate set forth in this section. Such contribution shall be transmitted immediately to the retirement board.

**(b) All contributions required to be made under this section with respect to services rendered by an active member on or after January 1, 1986, shall be picked up by the city and shall be treated as an employer's contribution in determining tax treatment under Internal Revenue Code section 414(h)(2). For all other purposes, under this act and otherwise, such pickup contributions shall be treated as contributions made by a member prior to January 1, 1986. The city shall pay such picked up amounts from the same source of funds which is used in paying earnings to the employee.**

102:1 New Paragraph; Manchester Retirement System; Contributions by Employees; Additional Contributions. Amend 1973, 218:9, as amended by 2002, 194:1, by inserting after paragraph II the following new paragraph:

III.(a) In addition to the contributions deducted from the compensation of members as hereinbefore provided, and subject to the approval of the board of trustees and to such rules and regulations as the board may make with respect to the crediting of interest thereon, any member may provide an additional retirement allowance by making contributions at an additional rate not in excess of the rate computed to be sufficient to provide an additional retirement allowance which, together with his regular retirement allowance, will result in a total retirement allowance not in excess of 50 percent of his final average earnings. Such additional contributions shall become part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as a member annuity of equivalent actuarial value. Any actuarial fees incurred in determining the amount of additional contributions required to provide benefits pursuant to this subparagraph shall be paid by the member.

(b)(1) Any member, or a member's employer, may make additional contributions on behalf of a member at an additional rate as determined by the actuary and approved by the board of trustees or its designee. Any additional contributions made by a member who intends to retire pursuant to section 11, paragraph II, or additional contributions of the employer, may be used to offset the reduction, or a portion thereof, in retirement benefits for early retirement as provided in section 14. Any actuarial fees incurred in determining the amount of additional contributions required for early retirement as provided by this subparagraph shall be paid by the member.

(2) Any additional contributions made under this subparagraph shall become part of the member's accumulated contributions including interest, and may be withdrawn, in cash, upon the member's retirement in lieu of the provisions in subparagraph (b) (1).

**218:10 Service Credit and Service Buybacks.**

40:2 Service Credit and Service Buyback. Amend 1973, 218:10, I, as amended by 2002, 194:1, to read as follows:

I. Service rendered for the full normal working time in a period of 12 consecutive months shall entitle a member to one year of service credit. Time spent as a member of any of the various city boards, or in any other capacity rendering incidental employment to the city, shall not be counted as service for the purposes of this act. Absence from employment on account of active duty with the armed forces of the United States in time of emergency or war, or as directed by selective service or to meet selective service requirements, or as a member of the national guard, or organized reserves, to meet its requirements, shall be counted as continuous employment with the city, provided, that the employee returns directly to active employment with the city [~~within 90 days~~] after he or she becomes eligible for release from such active duty. Any such period of absence shall not be counted as service unless the employee completes a service buyback.

II. Absence from employment on account of a leave of absence authorized by the city shall not be considered a termination of employment, provided that the employee returns to service with the city at the end of such leave of absence. Any such period of absence shall not be counted as service unless the employee completes a service buyback.

115:4 Manchester Retirement System; Service Buybacks. Amend 1973, 218:10, III, as amended by 2002, 194:1, to read as follows:

III. A member who ceases to be a member, withdraws his or her member contributions pursuant to section 11 of this act, and later becomes a member again, may make a request after the member's

return to city employment for service buyback of prior service credit for the previous time served as a member. ~~No benefits other than the right to withdraw member contributions pursuant to section 11 of this act shall accrue with respect to such previous period of service until the member shall have completed 5 years of continuous service in the current period of employment.~~ If a service buyback is not made, the member's benefit shall be based solely on the member's years of service and final average earnings after the break in service.

IV. A member may also make a service buyback request to receive prior service credit for a period prior to becoming a member during which the member was employed by the city in a temporary position or out on worker's compensation, leave of absence, or engaged in CETA, model city program, or any other capacity the retirement board determines should warrant service buyback. A service buyback for temporary service may only be made if the member became a permanent city employee without incurring a break in service. A service buyback is also available if, under the prior provisions of this act allowing employees to waive participation, an employee elected not to participate in the retirement system when hired and otherwise satisfies the requirements of section 7 of the act.

V. The retirement system shall enact rules for the administration of service buybacks. Buyback interest will be applied to the purchase of prior service credit. If a member does not purchase all available prior service credit, the service credit purchase must begin on the latest date of service available. Members are required to submit proof of employment in order to substantiate prior service.

VI. Upon a request for service buyback, the retirement board shall determine the cost of the requested service buyback, which amount shall include the contributions the member would have been required to make plus buyback interest, and provide a written statement to the member. The member shall pay all amounts related to the service buyback in one lump sum.

VII. Effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the Code notwithstanding any provision of this chapter to the contrary.

#### 218:11 Benefits Upon Termination of Employment Prior To Normal Retirement Date.

151:1Manchester Employees' Contributory Retirement System; Benefits Upon Termination of Employment Prior to Normal Retirement Date. Amend 1973, 218:11 as amended by 202, 194:1 to read as follows:

I. Any member ***who has not attained the normal retirement date and*** whose employment is terminated prior to the completion of 5 years of service and who is not entitled to a disability retirement pension shall receive a refund of his or her contributions together with regular interest thereon to the date of payment. Such refund shall be in lieu of all other rights and benefits payable to the member under this act. ***Any member who has attained the normal retirement date, but who wishes to receive a lump sum distribution of accumulated contributions plus interest in lieu of a monthly retirement benefit pursuant to section 12 of this act, may do so upon completion of a waiver of benefits provided by the retirement system.***

II. Any member whose employment is terminated prior to normal retirement date and after the completion of at least 5 years of service and who is not entitled to an early retirement pension or a disability retirement pension, and who does not elect to receive a cash refund of the member's contribution together with regular interest, will be entitled to receive, commencing on the normal retirement date, an annual pension computed in accordance with the provisions of section 12 of this act based on the member's total amount of service.

III. A member who is entitled to a deferred vested pension in accordance with the provisions of paragraph II of this section may, in lieu of all other rights and benefits under this plan, elect at any

time prior to the member's retirement date to receive a cash refund of the member's contribution together with regular interest thereon to the date of payment *upon completion of a waiver of benefits provided by the retirement system.*

151:2 Effective Date. This act shall take effect July 8, 2009.

**218:12 Retirement Benefits.**

147:5 Retirement Benefits; HB 1310 Contingency Provision. 1973, 218:12, I, as amended by HB 1310 of the 2002 legislative session, is repealed and reenacted to read as follows:

I. Any member who either has attained the age of 60 years or having been in the service of the city on January 1, 1974, has completed at least 20 years of service, shall be eligible for a normal retirement benefit under the provisions of this act. Any such member may retire by filing with the retirement board a written statement duly attested setting forth at what time subsequent to the date of filing thereof, the member desires to be retired, or the retirement board may, at its option, retire any such eligible member, furnishing written notice thereof at least 60 calendar days in advance of the specified date of such retirement.

II. The payment of retirement benefits to any member who is eligible to receive retirement benefits under any provision of this act, and who has filed all election forms with the retirement system, shall become effective the first day of the month following termination of employment pending approval by the retirement board. No changes to benefit elections are permitted after the commencement of the payment of benefits.

III. The retirement system shall not pay retirement or disability benefits to city employees who again become eligible to participate in the retirement system under the act. A member shall notify the retirement system of the member's rehire immediately. Upon rehire after a period of termination, all disbursements under the plan to that member shall cease and the member shall resume making contributions to the retirement fund as of the first pay period following the member's rehire. Rehired members shall have their benefits determined in accordance with section 13 of this act.

115:1 Manchester Retirement System; Retirement Benefits. Amend 1973, 218:12, IV, as amended by 2002, 194:1, to read as follows:

IV. Notwithstanding any provision of this act, the maximum pension payment payable to any member or beneficiary shall be limited to such extent as may be necessary to comply with the requirements of sections 401(a)(16), 401(a)(17) and 415 of the Code. The retirement benefits payable hereunder shall be made in the form, at such time and otherwise in compliance with the distribution and rollover requirements of sections 402(c), 401(a)(9), and 401(a)(31) of the Code. Member contributions and benefit upgrade purchases shall be made in conformity with section 415 of the Code.

V. Members who qualify for a normal retirement benefit shall receive an annual pension payable during the member's lifetime in an amount equal to the sum of:

40:3 Retirement Benefit Calculation. Amend 1973, 218:12, V(a), as amended by 2002, 194:1, to read as follows:

(a) One and 1/2 percent of the member's final average earnings multiplied by the number of years, including the fractions of years represented by full months, of service completed prior to

January 1, 1999, except that any service credit upgraded to the 2 percent rate pursuant to paragraph VI of this section shall be calculated in accordance with subparagraph (b); plus

(b) Two percent of the member's final average earnings multiplied by the number of years, including the fractions of years represented by full months, of service completed after December 31, 1998.

However, in the case of a member who both was in the employ of the city on January 1, 1974 and has completed not less than 20 years of service at the time of retirement, the annual pension payable during the member's lifetime shall be equal to the greater of the sum of the amounts determined in accordance with (a) and (b) of this paragraph, or 50 percent of final average earnings.

40:4 Optional Retirement Benefit. Amend 1973, 218:12, VI, as amended by 2002, 194:1 and 2004, 159:1, to read as follows:

115:2 Manchester Retirement System; Optional Benefit. Amend 1973, 218:12, VI, as amended by 2002, 194:1, 2004, 159:1, and 2005, 40:4, to read as follows:

VI. Prior to a member's termination of employment, a member may elect, under rules of the board, to receive a retirement benefit of 2 percent of the member's average final earnings for all years of service or any portion thereof, provided that the member shall be responsible for payment of 50 percent of the benefit based on methods and assumptions adopted by the board. The retirement system shall be responsible for the payment of the remaining 50 percent of the cost associated with the retirement benefit based on methods and assumptions adopted by the board.

**218:13 Restoration to Service Benefits.**

I. If a formerly disabled member or any other member who has commenced receiving benefits from the retirement system again becomes eligible to participate, the member's benefits shall cease. The member shall resume making contributions to the retirement fund and the member shall become eligible to receive a normal retirement benefit determined in accordance with this section.

II. A member whose benefit is governed by this section shall receive a normal retirement benefit equal to the sum of (a) the benefit calculated based on years of service and final average earnings prior to the break in service and (b) the benefit calculated based on years of service and final average earnings after the break in service. If a member has less than 3 years of service after the break in service, the member's benefit after the break in service shall be based upon the earnings of the member for all weeks of service until the retirement date, divided by the number of weeks of service and multiplied by 52.

**218:14 Early Retirement Option.**

147:6 Early Retirement Option; HB 1310 Contingency Provision. 1973, 218:14, I, as amended by HB 1310 of the 2002 legislative session, is repealed and reenacted to read as follows:

I. Each member whose age plus years of service equal 80, or who attains age 55 with a minimum of 20 years of service, may have the option, to be exercised by a written notice to the retirement board, to retire at any time thereafter, prior to the member's normal retirement date. The amount of retirement benefits payable to such retired member shall be computed as provided in section 12 of this act, except that the date of such early retirement shall be used in determining the member's service, and the amount thus obtained will be reduced for each month by which the date on which



benefits commence precedes the month after which the member attains 60 years of age by 1/6 of one percent.

II. The contingent annuitant and 10-year certain options provided for in sections 17 and 18 of this act may be elected by a member who elects to retire early under this section, in which case the term "retirement date" shall be deemed to mean early retirement date wherever applicable in sections 17 and 18 of this act.

#### **218:15 Disability Benefits and Their Payment.**

I. Any member of the retirement system who, after 15 years of continuous service as an employee of the city, shall become totally and permanently disabled such that the member is incapable of performing the essential functions of his or her position prior to such disability, may be retired for disability according to the provisions of this act. The determination as to total and permanent disability shall be made by the retirement board upon review of an application for disability benefits submitted by the member and consultation with at least 2 impartial physicians selected by the retirement board who shall examine the member and submit written reports to the retirement board.

II. Members who retire for disability under this act shall be entitled to an annual disability benefit payable until the earlier of the termination of such disability or the member's death, computed on the basis of service completed prior to the date of disability in an amount equal to the sum of:

40:5 Disability Retirement Benefit Calculation. Amend 1973, 218:15, II(a), as amended by 2002, 194:1 to read as follows:

(a) One and 1/2 percent of the member's final average earnings multiplied by the number of years, including the fractions of years represented by full months, of service completed prior to January 1, 1999, except that any service credit upgraded to the 2 percent rate pursuant to section 12, paragraph VI shall be calculated in accordance with subparagraph (b); plus

(b) Two percent of the member's final average earnings multiplied by the number of years, including the fractions of years represented by full months, of service completed after December 31, 1998.

The disabled member may also receive his or her disability benefit in the form of a contingent annuity as described in section 17.

III. If such total disability is shown, to the satisfaction of the retirement board, to have been sustained during the performance of duties pertaining to the member's employment by the city, the member shall be entitled to retirement for disability irrespective of the duration of employment. In order for a member to receive disability benefits under this section, the member shall submit an application for disability benefits within 60 days of termination of employment. However, any member receiving a disability benefit on account of total and permanent disability sustained during the performance of duties pertaining to employment by the city, as provided herein, shall receive a benefit equal to the greater of the sum of the amounts determined in accordance with (a) and (b) of paragraph II, or 50 percent of final average earnings. If a member has less than 3 years of service at the time of becoming totally disabled in the performance of duties pertaining to the member's employment by the city, the member's pension shall be based upon the member's annualized disability earnings. The disabled member may also receive his or her disability benefit in the form of a contingent annuity as described in section 17.

40:6 Disability Benefits; Medical Examination. Amend 1973, 218:15, IV, as amended by 2002, 194:1 to read as follows:

IV. Following the retirement of a member with a disability retirement pension and prior to the member's normal retirement date, the retirement board may require such retiree to undergo a medical examination to be made by or under the direction of a physician or physicians designated by the retirement board. Should any disabled member refuse to submit to such medical examination, the disability retirement pension shall be discontinued by the retirement board until the withdrawal of the refusal. If the refusal continues for one year, all the member's rights in and to a disability retirement pension shall be revoked by the retirement board. If, upon such medical examination, the physician or physicians certify to the retirement board that the disabled member is physically and mentally able and capable of resuming employment in the capacity in which the member became disabled, the member's disability benefit shall be terminated.

V. Each disabled member shall, until his or her normal retirement date, submit a report each year to the retirement board indicating earnings from employment. If the retirement board finds that any disabled member is engaged in any substantial gainful employment other than for the primary purpose of rehabilitation, the member's disability benefit shall be reduced if such gainful occupation pays more than the difference between the member's annual disability benefit and final average earnings, after making allowance for changes in the cost of living as approved by the board. The amount of reduction shall be equal to one dollar of benefits for each 2 dollars of employment earnings in excess of the difference between the member's final average earnings (after making allowance for changes in the cost of living) and the annual disability benefit. The board shall have the right to suspend payments of a permanent disability pension if the disabled person fails to report earned income. Such suspension shall be for the period during which there is no satisfactory report, with restoration of benefits upon acceptance of such report, or until the member's normal retirement date, whichever occurs first.

90:5 Repeal. 1973, 218:15, VI, as amended by 2002, 194:1, relative to worker's compensation offset provisions applied to disabled participants, is repealed.

~~VI. A member's disability retirement benefit shall be reduced by any amounts which may be paid or payable to, or on behalf of, any member or retired member for the same disability under the provisions of any city funded workers' compensation or similar plan, except that any city employee who is receiving both disability retirement benefits and workers' compensation benefits as of January 1, 1986, shall not be affected.~~

21:1 Manchester Retirement System; Benefits Upon Death of a Member. 1973, 218:16, as amended by 2002, 194; 2003, 16.1; and 2007, 45:1, is repealed and reenacted to read as follows:

#### **218:16 Benefits Upon Death of A Member.**

##### **I. Accidental Death Benefits.**

(a) If, upon the receipt by the board of trustees of proper proof of the death of a member in service indicating that such death was the natural and proximate result of an accident occurring while in the performance of duty at some definite time and place, the board decides that death was the result of an accident in the performance of duty and not caused by the member's own gross negligence, recklessness, or willful misconduct, the member's surviving spouse shall be entitled to the larger of an annual benefit equal to 50 percent of the member's final average earnings paid in equal monthly installments or a monthly benefit computed according to the member's creditable service and final average earnings for the 100 percent contingent annuitant option inclusive of the early retirement reduction of 2 percent per year for each year prior to member's normal retirement age. In lieu of either option, the member's surviving spouse may instead elect a lump sum payment as described in paragraph I (c).

(b) If at the time of death, the member is not survived by a spouse and the member has designated their child or children under age 18 as his or her beneficiary/beneficiaries pursuant to section 19 of this act, then the annual benefit described in paragraph I(a) shall be payable to the

member's child or children under such age, divided in such manner as the board in its discretion shall determine, to continue for the benefit of such child or children under said age until every child dies or attains age 18. In lieu of this annual benefit, the child or children may instead elect a lump sum payment as described in paragraph I (c). The retirement system shall be fully protected in making any payment hereunder required to be made to a minor if such payment is made to a custodian or guardian for such minor.

(c) If the member does not have a surviving spouse or children, there shall be payable to the beneficiary designated by the member pursuant to section 19 of this act, if living, otherwise to the member's estate, a lump sum equal to the deceased member's annual base salary at the time of death, in addition to a refund of contributions plus regular interest until the date of payment as provided under section 11, paragraph I.

## II. Ordinary Death Benefits.

(a) Upon receipt by the board of trustees of proper proof of the death of a member in service indicating that such death was not the result of an accident occurring while in the performance of duty, there shall be a death benefit payable to the member's surviving spouse, if living, otherwise to the member's designated beneficiary or the member's estate.

(b) If at the time of death, the member has at least 5 years of creditable service or qualifies to retire under the retirement provisions of section 12 or section 14 of this act, and has a spouse, the member's spouse shall be entitled to receive a monthly lifetime benefit equal to the greater of either 50 percent of the service retirement benefit straight life option without reduction that would have been payable to the member had they been eligible to retire immediately prior to death based upon final average earnings and creditable service or, a monthly benefit computed according to the member's creditable service and final average earnings for the 100 percent contingent annuitant option inclusive of the early retirement reduction of 2 percent per year for each year prior to the member's normal retirement age. In lieu of either option, the surviving spouse may instead elect a lump sum equal to the deceased member's annual base salary at the time of death, in addition to a refund of the member's contributions plus regular interest until date of payment as provided under section 11, paragraph I.

(c) If at the time of death, the member has at least 5 years of creditable service or qualifies to retire under the retirement provisions of section 12 or section 14 of this act, but is not survived by a spouse, and has designated his or her child or children under age 18 as his or her beneficiary or beneficiaries, there shall be payable divided in such manner as the board in its discretion shall determine, to continue for the benefit of such child or children under said age until every child dies or attains age 18, the greater of either 50 percent of the service retirement benefit straight life option without reduction that would have been payable to the member had they been eligible to retire immediately prior to death based upon final average earnings and creditable service or, a monthly benefit computed according to the member's creditable service and final average earnings for the 100 percent contingent annuitant option inclusive of the early retirement reduction of 2 percent per year for each year prior to member's normal retirement age or, a lump sum equal to the deceased member's annual base salary at the time of death, in addition to a refund of contributions plus regular interest until the date of payment as provided under section 11, paragraph I.

(d) If at the time of death, the member has at least 5 years of creditable service or qualifies to retire under the retirement provisions of section 12 or section 14 of this act but is not survived by a spouse, and the member's beneficiary is a child or children over age 18 or a person other than the member's spouse, then there shall be payable to the beneficiary if living, otherwise to the member's estate, a lump sum equal to the deceased member's annual base salary at the time of

death, in addition to a refund of the member's contributions plus regular interest until the date of payment as provided under section 11, paragraph I.

(e) If at the time of death, the member did not have at least 5 years of creditable service or did not qualify under the retirement provisions of section 12 or section 14 of this act, there shall be payable to the member's spouse, if living, or the member's designated beneficiary or beneficiaries, if other than the member's spouse, if living, otherwise to the member's estate, a lump sum benefit equal to the deceased member's annual base salary at the time of death in addition to a refund of contributions plus regular interest until the date of payment as provided under section 11, paragraph I.

### III. Return of Excess Accumulated Contributions Upon Death of a Member.

Upon the death of a member after his or her retirement allowance payments have commenced, provided the member has not elected an optional allowance that has become effective, any excess of the member's contributions at retirement over the sum of the retirement allowance payments received shall be paid in one sum to the person or persons nominated by the member, if living, otherwise to the member's estate. Upon the death of the survivor of a member and the beneficiary nominated by them under the terms of an option, if an option was elected and had become effective, any excess of the retired member's contributions at retirement over the sum of the retirement allowance payments received by the retired member and such beneficiary shall be paid to the person nominated by the member, if living, otherwise to the estate of the last to survive of the member and such beneficiary. Nomination of a person to receive the return of the member's contributions pursuant to this section shall be made by the member in writing filed with the retirement system prior to retirement. A member may change his or her nomination by a similar writing. A designation, revocation, or change of the person nominated under an optional election may be made only at the time the member retires, and is an irrevocable election.

2 Effective Date. This act shall take effect upon its passage. ( Approved April 25, 2011 ).

### 218:17 Contingent Annuitant Option.

I. Instead of the normal form of monthly retirement benefit provided under section 12 of this act, a member may, prior to his or her retirement date, elect a contingent annuitant option providing, if the member does not die before his or her retirement date, for actuarially reduced monthly retirement benefits payable during his or her lifetime after retirement and for the continuance of such payments, or a part of them specified by the member, to such contingent annuitant for his or her life after the death of a retired member. Such election may be made by a member at any time prior to his or her retirement date and may not be changed after his or her retirement date. The death of the contingent annuitant at any time prior to the member's retirement date shall automatically revoke such election; and further provided that if the contingent annuitant is the spouse of the member, a divorce granted to either spouse at any time prior to the member's retirement date shall automatically revoke such election.

II. If a member who has elected this option dies before his or her retirement date, no benefits shall be payable to the contingent annuitant under this option. In such circumstances, benefits, if any, are to be paid in accordance with sections 11 and 16 of this act. If the member dies after his or her retirement date, the contingent annuitant shall receive for life, commencing on the first day of the calendar month coinciding with or next following the retired member's death, the benefits specified by the retired member for the contingent annuitant.

III. If the contingent annuitant dies before the member's retirement date, the monthly retirement benefit normally provided under this act shall be payable to the retired member as if the option had

not been elected. If the contingent annuitant dies after the member's retirement date, the amount of the payments which the retired member is then receiving or is entitled to receive will at that time (with no provisions for retroactive payments) revert back to what it would have been at the member's retirement date if the option had not been elected and will cease upon the retired member's death.

IV. Instead of the normal form of disability benefit provided under section 15 of this act, a disabled member may, prior to the start of disability benefits, elect a contingent annuitant option providing for actuarially reduced monthly disability benefits payable during his or her lifetime and for the continuance of such payments, or a part of them as specified by the disabled member, to such contingent annuitant for his or her life after the death of the disabled member.

V. Once the contingent annuitant option has been elected by a disabled member, it may not be changed or revoked except in the case of death of the contingent annuitant. If the contingent annuitant dies after the disabled member has started receiving disability benefits, the amount of the payments which the disabled member is then receiving or is entitled to receive shall at that time with no provisions for retroactive payments revert back to what it would have been at start of the payment of disability benefits if the option had not been chosen and will cease upon the disabled member's death.

**218:18 Ten-Year Certain Option.**

Instead of the normal form of monthly retirement benefit provided under section 12 of this act, a member may elect an actuarially reduced monthly retirement benefit payable for 10 years certain and life thereafter. Such election may be made by a member at any time prior to his or her retirement date and may not be changed after his or her retirement date. Under this option, 120 monthly payments will be made regardless of how long the member lives. If a member dies after his or her retirement date, but before 120 monthly payments have been made, the balance of the 120 monthly payments shall be made to the member's beneficiary. If the beneficiary, having survived the retired member, dies before all of said 120 payments have been made, then the commuted value of the balance of said payments shall be paid in a lump sum to the beneficiary's estate. If the member dies before his or her retirement date, no benefits shall be payable under this option. If the member survives beyond the 120 month guaranteed payment period, actuarially reduced monthly retirement benefits shall continue until the death of the member at which point the benefit payments shall cease.

16:2 Manchester Retirement System; Designation of Beneficiaries; Reference Changed. Amend 1973, 218:19, as amended by 2002, 194:1, to read as follows:

**218:19 Designation of Beneficiaries.**

A member may, prior to his or her retirement date, designate a beneficiary or beneficiaries to receive any benefits, other than the annuity death benefit payable under section 16 payable on or after the member's death. The member shall designate his or her beneficiaries on a form satisfactory to the retirement board. The board shall be entitled to rely on a form that is witnessed by a board representative or a notary public and delivered to a retirement board representative. A member may at any time revoke his or her beneficiary designation or change his or her beneficiaries by completing a new form in accordance with the requirements of this section. The retirement board shall be entitled to rely on such designation for purposes of the payments of benefits under this act. In the event no valid designation of beneficiary exists at the time of the member's death, or all beneficiaries shall predecease the member, any benefits shall be payable to the member's estate.

**218:20 Adjustments in Benefits for Retirees to Maintain Financial Parity.**

40:7 Adjustments. Amend 1973, 218:20, as amended by 2002, 194:1, to read as follows:

In order to maintain the economic value of a member's retirement income on a parity with the value of the monthly payments at the time of retirement, and to offset the impact of inflation in reducing the real income of the member's retirement payment, the retirement board may, as deemed necessary, adjust the payments to retirees to maintain their incomes at an approximate level with their real incomes at the time of retirement, provided, however, that payments to retired members shall not be less than the payment to which they were initially entitled at the time of retirement; provided further that sufficient funds are available to fund any additional benefits either through earnings of the retirement fund or through such special appropriation by the city as may be approved by the board of mayor and aldermen. Any adjustment made to a member's retirement income by the retirement board pursuant to this section shall not apply to the additional retirement allowance or benefit purchased by the member pursuant to section 9, paragraph III.

40:8 Retirement System Employees. Upon the effective date of this section, employees of the Manchester employees' contributory retirement system in service on the effective date, shall be eligible to purchase prior service credit for continuous time in the service of the Manchester employees contributory retirement system. The cost of such service shall be paid by the member based on methods and assumptions adopted by the board.

40:9 Effective Date. This act shall take effect 60 days after its passage.

(Approved: May 17, 2005) (Effective Date: July 16, 2005)

**218:21 Limitations of Action.**

No action for amount due under the provisions of this act shall be brought by a member but within 3 years after the right of action accrues. Persons legally incapable of bringing an action when the right accrues may sue at any time within 3 years next after becoming legally capable of instituting suit. All amounts not claimed within said period shall remain a part of the retirement fund.

**218:22 Exemptions from Taxation.**

The right of any person to a pension or to the return of contributions, any benefit or right accrued or accruing to any person under the provisions of this act, and the cash and securities held under this act, shall be exempt from any state or municipal tax, and exempt from levy and sale garnishment, attachment or any other process, and shall be un-assignable.

115:3 Manchester Retirement System; Overpayments. Amend 1973, 218:23, as amended by 2002, 194:1, to read as follows:

**218:23 Exclusive Benefit of Members and Beneficiaries.**

I. All contributions made by the city to the retirement system shall be for the exclusive purpose of providing benefits to the retirement system members and their beneficiaries, and no part of the assets of the retirement system shall revert to the city or other contributors, except if a contribution is made to the retirement system by the city under mistake of fact, such contribution shall be returned within one year after its payment and in the event of the termination of the retirement system, excess funds shall be returned to the city as provided in section 27 of this act.

II. If any change or error in the records or in the computation of a member's or beneficiary's benefit or refund results in any member or beneficiary receiving from the retirement system more, in an overpayment, or less than the member or beneficiary would have been entitled to receive had the records or computation been correct, the retirement system shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. An overpayment shall constitute a debt owed by the recipient to the retirement system and the board is authorized to use any and all legal and/or equitable actions to collect the overpayment and any accrued interest. The retirement board is authorized to enter into written agreements with recipients of overpayments to provide for installment payments to recover overpayments, the amount of accrued interest, and interest on any unpaid balance. The retirement board is authorized to compromise any disputed overpayment. Interest shall accrue on overpayments at the rate or rates established by the retirement board; provided, however, that no interest shall accrue if the retirement board has exercised its adjustment authority or under other circumstances in which the board, in its discretion, determines that interest shall not accrue.

**218:24 Water Department Contributions and Employees' Eligibility.**

The employees and officials of the water department of the city shall be entitled to the benefits of, and subject to the requirements of this act. The water department shall pay to the retirement fund annually such amounts as the retirement board determines to be necessary in accordance with sound actuarial principles, to defray the city share of the cost of pensions to which its employees and officials are or may be eligible hereunder.

**218:25 Employees Previously Retired.**

All employees who are retired on January 1, 1974, shall continue to receive the benefits to which they were previously entitled under the provisions of the various enabling acts concerning pensions for employees of the city prior to the passage of this act. The board of mayor and aldermen of the city is authorized to appropriate this amount in the municipal budget on a yearly basis.

**218:26 Review of Retirement Board Orders.**

I. Any member aggrieved by a decision of the retirement board denying the benefits provided by this act may request a hearing by filing a written petition no later than 45 days after the date of the decision. The petition shall include the name and address of the member, the denial of benefits being contested, legal basis on which the denial is being contested, and any documentation or exhibits which support the member's position. The retirement board shall grant or deny the hearing request within 14 days of the member's request. The rules and procedures for all hearings shall be set forth in the administrative rules.

II. All decisions of the retirement board following any hearing shall be sent to the petitioning member by certified mail, return receipt requested, within 45 days of the hearing. Any decision adverse to the member shall be made in writing and shall enumerate the findings of fact and conclusions of law upon which the decision is based. Any decision in favor of the member shall be transmitted to the employee in writing, but may be in summary form.

III. The procedure for review, rehearing, and appeal of an order or decision of the retirement board with or without a hearing shall be that prescribed by RSA 541, as amended from time to time.

**218:27 Termination or Merger of the Retirement System.**

I. In the event of the merger or consolidation of the retirement system with, or the transfer of assets or liabilities to, another retirement plan qualified under Section 401(a) of the Code, each member shall be entitled to receive a benefit, upon termination of such other retirement plan after such merger, consolidation, or transfer, which is at least equal to the benefit which the member would have been entitled to receive immediately before the merger, consolidation, or transfer if the retirement system had been terminated at that time.

II. In the event of the discontinuance of the retirement system, or the complete discontinuance of contributions by the city, an actuarial study shall be made to determine the amount of reserve funds necessary to continue to fund those retirements then in effect, and such funds shall be reserved for that purpose, and any excess funds shall be returned to the city. Members shall be vested as provided in accordance with the applicable provisions of sections 411(e)(2) and 401(a)(7) of the Code notwithstanding any provision of this act to the contrary.

(Approved: May 15, 2002)

(Effective Date: Section 2 of this act, relative to the referendum, shall take effect May 15, 2002. If the remaining provisions of this act shall be adopted as provided in section 2, said provisions shall be declared adopted and shall become effective on the date of the election.)

41:1 New Section; Manchester Retirement System; Medical Insurance Coverage. Amend 1973, 218, as amended by 2002, 194, by inserting after section 27 the following new section:

**218:28 Medical Insurance Coverage.**

I. The plan shall establish a subtrust pursuant to Internal Revenue Code Section 401(h) for the purposes of funding a flat rate subsidy to assist in the payment of group health insurance premiums for members. The retirement system shall enact such rules and regulations as the board may deem necessary to implement this section.

II. Member contributions toward this subsidy shall be funded by an increase in the member contribution rate established pursuant to section 218:9, I by 1.25 percent. Under no circumstances shall a member be entitled to a refund of contributions made to the Section 401(h) subtrust. Notwithstanding any other provisions of chapter 218 to the contrary, members shall not be entitled to a refund of contributions made to the Section 401(h) subtrust. The city shall fund the remaining cost of funding the 401(h) subtrust based on methods and assumptions determined by the board. Any contribution made by the city intended to fund the 401(h) subtrust shall be so designated. Any transfers of retirement system assets to the 401(h) subtrust shall be limited to excess assets as defined in Internal Revenue Code Section 420(e)(2). All such transfers must be made in accordance with Internal Revenue Code Section 420 and all applicable Treasury regulations.

III. The benefits provided by the 401(h) subtrust will be payable only to members who have retired in accordance with sections 218:12, 218:14, or 218:15. The amount payable by the retirement system on account of qualified members shall be paid over to the city, insurer, or health care administrator as may be determined by contractual arrangements between the city and such entities. Benefits provided by the 401(h) subtrust shall cease at the death of the member.

IV. Eligibility shall be limited to single person coverage or single person Medicare supplement for the member to whom the benefit accrued and shall not apply to beneficiaries as defined by this act.



V. The value of the subsidy provided to a member shall depend upon the years of service credit earned by the member prior to retirement and the date on which the member retires. The initial base amount available to members retiring on or before the effective date of this section shall be \$1,200 per year. The initial base amount available to members who have terminated employment before the effective date of this section and retire after the effective date of this section shall be \$1,200 per year. The initial base amount available to members in the employment of the city at the effective date of this section and who contributed toward this benefit and retire after the effective date of this section shall be \$2,400 per year. The base amounts shall increase by 4 percent on January 1 of each year beginning on January 1, 2007. A member who retires with less than 10 years of service credit shall receive 25 percent of the initial base amount as has been adjusted annually. A member who retires with at least 10 years of service credit but less than 15 years of service credit shall receive 50 percent of the initial base amount as has been adjusted annually. A member who retires with at least 15 years of service but less than 20 years of service credit shall receive 75 percent of the initial base amount as has been adjusted annually. A member who retires with at least 20 years of service credit shall receive 100 percent of the initial base amount as has been adjusted annually.

VI. Any subsidy made available pursuant to this plan shall be limited to members who participate in the city's group health insurance program. No benefit or subsidy shall be payable directly to a retired member, nor shall any cash equivalent or other form of subsidy be payable for purposes outside of group health coverage provided by the city to its retirees. Any member who has retired before the effective date of this section shall have the option of re-enrollment in the medical or health plan sponsored by the city and of receiving benefits under this section at such re-enrollment date, provided that such retired member shall apply to the city within 90 days of the effective date of this section. Any member who terminated employment before the effective date of this section and later retires and becomes eligible to receive benefits under this section shall have the option of re-enrolling in the medical or health plan sponsored by the city and of receiving benefits at such re-enrollment date, provided that such member shall apply to the city within 90 days of the member's retirement. Such re-enrollment rights to participate in the medical or health plan sponsored by the city shall be available for all members when they retire. Upon receipt of any enrollment application, the city shall enroll such retiree in the city's plan in the same manner and subject to the same conditions as enrollment of a new employee but without any benefit-waiting period which may be applicable to new employees. The 401(h) subtrust, the city and the city's group health plan shall not be liable for any claims incurred prior to the date of enrollment. The retirement system shall notify all retirees of their right to re-enroll in the city's health plan and to receive benefits at their re-enrollment date under this section. Any member who is eligible to receive a subsidy under the provisions of this section, but who does not need and who declines such benefits because they would be duplicative of coverage under any employer-sponsored plan, shall nevertheless continue to be eligible and, upon ceasing to be eligible for the other coverage, shall be permitted to re-enroll in the medical or health plan sponsored by the city without any waiting period and receive the benefits allowable under this section at such re-enrollment date.

VII. All contributions made by the members and by the city to provide medical benefits under this section shall be maintained in a separate account and all such funds shall not be used for or diverted to any purpose other than to provide medical benefits. Similarly, none of the funds accumulated to provide the retirement benefits set forth in chapter 218 may be used or diverted to provide medical benefits through the 401(h) subtrust. The funds, if any, providing medical benefits through the 401(h) subtrust shall be invested pursuant to the provisions of section 218:6. At all times, the aggregate contributions to provide medical benefits through the 401(h) subtrust must not exceed the subordination limits set forth in Internal Revenue Code Section 401(h) and any applicable Treasury regulations. Notwithstanding the foregoing, in the event of the termination of the 401(h) subtrust, upon satisfaction of all liabilities to provide medical benefits, any amount remaining in the subtrust shall be returned to the city.

41:2 Referendum. At the election to be held in the city of Manchester in September or November, 2005, the city clerk then in office shall cause to be included on the ballot the following statement and question: "A contributory retirement plan for city employees was adopted by the voters of Manchester at the November 1973 election. The plan became effective in January 1974, and now, benefit improvements are requested. Are you in favor of the passage of an act of the General Court of 2005, amending the city of Manchester employees contributory retirement system to add a Section 401(h) subtrust for the payment of a health subsidy to retirees?" Beneath this statement and question shall be printed the word "Yes" and the word "No" with a square immediately opposite such word in which the voter may indicate his or her choice. If a majority of the voters present and voting on the question shall signify their approval thereof, this act shall be declared adopted effective 90 days after the date of the election, except as otherwise provided within the act. The city clerk shall, within 10 days after said election, certify to the secretary of state the result of the vote on the question.

41:3 Effective Date. Section 2 of this act, relative to the referendum, shall take effect upon its passage. If the provisions of section 1 of this act shall be adopted as provided in section 2, said provisions shall be declared adopted and shall become effective as follows:

I. Creation of the 401(h) subtrust pursuant to 218:28 as inserted by section 1 of this act and contributions by the member shall commence 90 days after the date of the election.

II. Contributions by the employer shall commence with payrolls paid after July 1, 2006.

III. Commencement of benefits to retirees in the form of subsidies paid to their former employer shall commence with remittances made after July 1, 2006 for group health insurance purposes.

(Approved: May 17, 2005)

115:5 New Sections; Service Credit; Spousal Acknowledgment. Amend 1973, 218 as amended by 2002, 194 and 2005, 41 by inserting after section 28 the following new sections

**218:29 Credit for Service in Other Public Retirement Systems.**

I. Notwithstanding any provision of this chapter to the contrary, any member of the Manchester Employees' Contributory Retirement System, in service on or after June 30, 2006, who was formerly a member of a public employees' retirement system elsewhere in the United States, shall be allowed to purchase credit for such service as creditable service in the Manchester Employees' Contributory Retirement System; provided, however, that creditable service in the Manchester Employees' Contributory Retirement System which is purchased under this paragraph shall not be deemed creditable service for the purpose of eligibility for medical and surgical benefits as a retired employee under section 28. For such members, only creditable service performed in the city of Manchester as a member of the Manchester Employees' Contributory Retirement System shall be counted as creditable service for the purpose of eligibility for medical and surgical benefits as a retired employee under section 28. For the purposes of this section, "public employees' retirement system" shall include any retirement system established and maintained by the United States government, the members of which are federal government employees. For the purposes of this section, any military service not otherwise authorized pursuant to section 10, paragraph I shall not be included as creditable service in a public employees' retirement system. The member shall meet the following conditions to purchase credit under this section:

(a) The member has terminated employment and active membership in the other public system and has become a member of the Manchester Employees' Contributory Retirement System; and

(b) The member applies for service credit, on a form designated by the board; and

(c) The member provides such information and certification from the other public employer and other public retirement system as the board may require; and

(d) The member pays to the Manchester Employees' Contributory Retirement System the full cost for buy-in of creditable service as provided in section 10, paragraph VI, including prepayment of any actuarial calculation fee as determined by the board; and

(e) The amount of creditable service purchased shall be either the full length of service rendered in the other system or a pro-rata portion of such service purchasable with the maximum amount which the member is permitted to withdraw from the other system; and

(f) In no case shall the creditable service purchased exceed the service time rendered in the other public system, or include any service period for which the member remains eligible for benefits in the other public system.

II. Upon certification by the Manchester Employees' Contributory Retirement System of eligibility for other public system service credit, and upon payment by the member of the cost of such credit, and with the approval of the board of trustees, the member shall receive credit for such other public system service.

III. In no case shall other public employees' retirement system service purchased as creditable service in the Manchester Employees' Contributory Retirement System under the provisions of this section be deemed to be creditable city service for the purposes of eligibility for longevity or other benefits solely within the discretion of the city of Manchester.

**218:30 Spousal Acknowledgment.**

Any application for any type of benefit under this act, including but not limited to retirement benefits, return of contributions, or disability retirement allowances shall include a statement made by the spouse of the member, if any, acknowledging that the spouse has read and understands the provisions of this act concerning the benefits and payments options and the benefit and payments options, if any, the member has elected to receive. Such statements shall be signed in the presence of a notary public or retirement system employee.

115:6 Effective Date. This act shall take effect upon its passage.

Approved: May 9, 2006 Effective: May 9, 2006

224:1 New Section; Manchester Employees' Contributory Retirement System; Acceptance of Certain Tax Sheltered Funds for Allowable Service Purchases. Amend 1973, 218, as amended by 2002, 194 and 2006, 115, by inserting after section 30 the following new section:

**218:31 Acceptance of Certain Tax Sheltered Funds.**

I. For the purposes of funding a service buyback in accordance with section 10, paragraphs III and IV, and Administrative Rule 2.6, the Manchester Employees' Contributory Retirement System may accept a trustee to trustee transfer of funds from a retirement plan that is tax-qualified as described in section 401(k), 403(b), or 457 of the United States Internal Revenue Code of 1986, as amended. Any such transfers shall be limited to the amount necessary for a service buyback as determined by the retirement system in accordance with section 10, paragraph VI.

II. The provisions of this section shall be subject to all provisions of this act, as amended, in conformity with applicable provisions of the United States Internal Revenue Code of 1986, as amended.

III. Service credit purchased under this section shall be creditable service for the purpose of eligibility for retirement and other benefits under this act, as amended.

IV. A service buyback will not be allowed if the service buyback would violate section 415(n) of the Internal Revenue Code of 1986, as amended.

V. Service buybacks made pursuant to this section shall comply with all informational requirements appearing on the "Application for Acceptance of Tax Sheltered Funds for Service Buybacks" which is provided by the retirement system.

224:2 Effective Date. This act shall take effect upon its passage. (June 1, 2006)

97:1 New Section; Manchester Employees' Contributory Retirement System; Continued Membership. Amend 1973, 218, as amended by 2002, 194, 2006, 115, and 2006, 224, by inserting after section 31 the following new section:

**218:32 Continued Membership for Employees Affected by Reorganization.**

I. Notwithstanding any provision of law to the contrary, any person who is a member of the Manchester employees' contributory retirement system whose position is reclassified as a result of reorganization by the city of Manchester, and who continues employment in the position for which the reclassification would otherwise require membership in the New Hampshire retirement system under RSA 100-A, shall be granted the option upon such reclassification to either remain affiliated with the retirement system, or to accept membership in New Hampshire retirement system under RSA 100-A. Any employee subsequently hired into the reclassified position shall be required to be a member in the New Hampshire retirement system under RSA 100-A.

II. Members affected by paragraph I may elect in writing, on forms developed by the retirement system, to remain a member of the retirement system. The member shall complete and submit the election form not later than the effective date of the transfer or reclassification of the position, and shall submit them to both the retirement system and the employer. Employees so electing shall be members of the retirement system exclusively. The election of such a member shall be deemed permanent and cannot be revoked once accepted by the board.

III. Any retirement system members who, in the event of a reorganization by the city of Manchester, elect to become members of the New Hampshire retirement system under RSA 100-A may elect to file as vested deferred members of the retirement system if their accumulated service credit at the time of transfer or reclassification exceeds the 5-year requirement for vesting. Members with less than 5 years of accumulated service credit shall be entitled to a refund of contributions.

97:4 Effective Date. This act shall take effect upon its passage.

Approved: June 11, 2007 Effective: June 11, 2007

90:6 Effective Dates. Section 3 of this act shall take effect 90 days after its passage. The remainder of this act shall take effect 30 after its passage. Approved: May 21, 2008 Effective Date: Section 3 shall take effect August 19, 2008. The remainder shall take effect June 20, 2008.