

CHAPTER NO. 76**SENATE BILL NO. 2048****By Crutchfield, Fowler****Substituted for: House Bill No. 2133****By Wood, Sharp**

AN ACT to amend Chapter 557 of the Private Acts of 1939; as amended by Chapter 491 of the Private Acts of 1941; Chapter 134 of the Private Acts of 1949; Chapter 65 of the Private Acts of 1953; Chapter 197 of the Private Acts of 1965; Chapter 80 of the Private Acts of 1969; Chapter 356 of the Private Acts of 1974; Chapter 268 of the Private Acts of 1978; Chapter 156 of the Private Acts of 1981; Chapter 199 of the Private Acts of 1990; Chapter 237 of the Private Acts of 1992 and Chapter 75 of the Private Acts of 1995; and any other acts amendatory thereto, thereto being 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 491 of the Private Acts of 1941, Chapter 134 of the Private Acts of 1949, Chapter 65 of the Private Acts of 1953, Chapter 197 of the Private Acts of 1965, Chapter 8 of the Private Acts of 1969, Chapter 356 of the Private Acts of 1974, Chapter 268 of the Private Acts of 1978, Chapter 156 of the Private Acts of 1981, Chapter 199 of the Private Acts of 1990, Chapter 237 of the Private Acts of 1992, Chapter 75 of the Private Acts of 1995, and all other acts amendatory thereto, is further amended by deleting the following words and punctuation in Section 22(a): "...provided such person shall purchase any prior service such person may have as provided herein.", and "...and the provisions of this section shall be the only section of this act which applies to county commissioners."

SECTION 2. (a) The following sections are deleted in their entirety: Section 22(b)1, Section 22(b)3, Section 22(b)4, and Section 22(b)7.

(b) Section 22(b)2 is amended by deleting the following words and punctuation: "county councilman", and ", upon payment of the contributions at the same rate as required for the purchase of other prior service. Provided,".

(c) Section (b) 6 is amended by adding the following words and punctuation: "...later of the" immediately following "following the" and before "participant's 55th birthday", and by adding "... and the fifth anniversary of the date the participant first served as a county commissioner." immediately following "participant's 55th birthday".

(d) All remaining sections shall be renumbered accordingly.

SECTION 3. Section 22 is further amended by deleting the section and by substituting the following:

Section 22. (a) Any person who is a county commissioner or who becomes a county commissioner may participate in this retirement system upon the terms and

conditions established in this section. This section shall apply only to county commissioners, unless otherwise stated herein.

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

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

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

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

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

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

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

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

(8) A participant may select an optional method of benefit payment described in Section 16 in lieu of the prescribed life income, which is actuarially

equivalent thereto. The purpose of the optional method is to permit the guarantee of retirement income payments for some minimum period of time or to provide a continued life income to a surviving beneficiary after the death of a participant.

SECTION 4. Chapter 557 is amended by adding the following sections:

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

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

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

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

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

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

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

(2) The limitation in subdivision (a)(1) is deemed satisfied if the annual benefit payable to a member is not more than one thousand dollars (\$1,000) multiplied by the member's number of years of service or parts thereof (not to exceed ten (10)) with the employer, and the employer has not at any time maintained a qualified defined contribution plan, a

welfare benefit plan as defined in Section 419(e) of the Code, or an individual medical account as defined in Section 415(1)(2) of the Code, in which such member participated.

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

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

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

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

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

against the member's accounts in the following order of priority by the amount required to ensure compliance with this section:

(A) The annual additions to any other qualified defined contribution plan;

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

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

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

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

(A) Employer contributions;

(B) Employee contributions; and

(C) Forfeitures.

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

(2) "Annual Benefit" means a retirement benefit under the plan which is payable annually in the form of a straight life annuity. Except as provided below, benefit payable in a form other than a straight life annuity shall be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this section. The annual benefit shall not include any benefits attributable to employee contributions (other than contributions picked up by the employer in accordance with Code Section 414(h)) or rollover contributions, or the assets transferred from a qualified

plan that was not maintained by the employer. No actuarial adjustment to the benefit is required for (i) the value of a qualified joint and survivor annuity (as defined in Code Section 417(b)), (ii) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, preretirement death benefits, and post-retirement medical benefits), and (iii) the value of post-retirement cost-of-living increases, if any, made in accordance with Section 415(d) of the Code and Section 1.4153(c)(2)(iii) of the Treasury Regulations.

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

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

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

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

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

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

prescribe. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

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

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

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

If the eligible employee was a member as of the first day of the first limitation year beginning after December 31, 1986, in one (1) or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, then the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would

otherwise exceed one (1) under the terms of this plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over one (1) times (ii) the denominator of this fraction, shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the Code Section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

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

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

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

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

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

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

(i) If the annual benefit of a member commences prior to age sixty-two (62), the defined benefit dollar limitation shall be the actuarial equivalent of an annual benefit beginning at age sixty-two (62), as determined above, reduced for each month by which benefits commence before the month in which the member attains age sixty-two (62). However, in no event shall the

adjustment in this subdivision (10) (B) (i) result in the defined benefit dollar limitation being reduced to an amount less than the minimum specified below. If the annual benefit of a member commences on or after age fifty-five (55), the minimum amount shall be seventy-five thousand dollars (\$75,000) (with no adjustments for increases in the cost of living). If the annual benefit to a member commences before age fifty-five (55), the minimum amounts shall be the actuarial equivalent of an annual benefit of seventy-five thousand dollars (\$75,000) commencing at age fifty-five (55) (with no adjustments for increases in the cost of living).

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

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

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

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

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

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

(12) "Year of Participation" means each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (i) the member is credited with at least the period of

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

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

Section 411(c)(2)(C)(iii) of the Code, up to the determination date. The interest rate used for periods of time commencing on the determination date shall be the rate specified in Section 417(e)(3) of the Code as of the last day of the prior plan year (as if such Code Section applied to this plan).

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

Section 26. Limitation on Earnings.

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

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

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

(a) A member shall begin to receive that member's plan benefits no later than April 1 of the calendar year following the later of (i) the year in which he attains age seventy and one-half (70 ½) or (ii) the year in which he retires. However, in no case shall the member's benefit commence later than the date required by Section 401(a)(9) of the Code, and in no case shall the distribution violate the minimum distribution incidental death benefit requirements of the regulations under Section 401(a)(9) of the Code.

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

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

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

(2) If the designated beneficiary is the member's surviving spouse, the date distributions are required to commence in accordance with subdivision (b)(1) above shall not be earlier than the date on which the member would have attained age seventy and one-half (70 ½), and if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the member.

Section 28. Right to Direct Rollover.

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

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

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

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

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

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

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

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

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

Section 32. Plan Forfeitures - Plan forfeitures occurring as a result of a member terminating employment with the county prior to completing five (5) years of service shall not be used to increase benefits of remaining plan members.

Section 33. Actuarial Equivalent - Effective July 1, 2002, actuarial equivalent shall mean a benefit of equivalent value on the basis of a seven and one-half percent (7.5%) interest rate, the RP-2000 Mortality Table for Employees (Male) for Members, and the RP-2000 Mortality Table for Employees (Female) for Beneficiaries.

Section 34. Definitions Applicable to this Act:

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

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

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

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

Section 35. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the Hamilton County legislative body. Its approval or rejection shall be proclaimed by the presiding officer of such county legislative body and certified by him to the Secretary of State.

Section 36. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 35.

PASSED: February 18, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of February 2004


PHIL BREDESEN, GOVERNOR