

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

August 25, 2016

Mitchell J. Landrieu, Mayor
City of New Orleans
1300 Perdido Street
New Orleans, LA

City Council
City of New Orleans
1300 Perdido Street
New Orleans, LA

Re: Serious Problems with Firefighters' Pension and Relief Fund for the City of New Orleans

Dear Mayor Landrieu and Councilmembers,

This letter raises serious questions about the cost of the Firefighters' Pension and Relief Fund for the City of New Orleans ("Pension Board"). Firefighters in the (State of Louisiana) Firefighters' Retirement System experience a disability retirement rate of about 10%, while New Orleans firefighters experienced disability retirement rates as high as 94%.

The Supplemental Earnings Benefit (SEB) provides an additional benefit of approximately \$30,000 per year for those firefighters who become disabled before retirement. The benefit is based on the firefighter's highest annual earnings, which means that the benefit is greatest if received in the last year before normal retirement. Unlike the (State of Louisiana) Firefighters' Retirement System, there was no offset for income earned after certification of disability retirement.¹ During 2013-2015, 44 of the 61 disability retirees were disabled by a slip and fall or a strain within one year of retirement, and 35 of them were proclaimed disabled by the same chiropractor who also rejected every light-duty proposal by the New Orleans Fire Department (NOFD).

The Pension Board also used a formula for calculating the pension that differed from the plain language of the governing statute. The effect of the Pension Board's application of statute raised the cost to the City by approximately \$2.6 million per year.

The Pension Board provided lucrative incentives for disability retirements. The benefits were so generous that 53 or 87% of the 61 who received disability retirements in 2013-2015 earned more than they did in their last 12 months before retirement.

¹ The City of New Orleans, the New Orleans Firefighters Pension Relief Fund and the New Orleans Firefighters Local 632 entered into a Cooperative Endeavor Agreement (CEA) on January 1, 2016. The CEA provides that existing and future SEB participants shall be subject to an SEB offset prospectively. However, unlike the (State of Louisiana) Firefighters' Retirement System, the Pension Board is disputing that the offset includes all income earned after a disability retirement.

ACTUARIAL REPORT MISREPRESENTED THE NUMBER OF DISABILITY RETIREMENTS

In 2011, the Office of Inspector General (OIG) reviewed a report issued by the Pension Board, titled *January 1, 2011 Actuarial Valuation*. The report listed the total number of “Disability Retirements” from the New Orleans Fire Department (NOFD) as 492, and the total number of “Ordinary Retirements” as 32. This meant that 94% of New Orleans firefighters retired with a “disability retirement” and only 6% retired with an “ordinary retirement.”²

After the OIG asked about the high number of disability retirements, the next actuarial report issued by the Pension Board, titled *January 1, 2012 Actuarial Valuation* showed significant changes in the relative numbers of “disability” and “ordinary” retirements: the total number of “disability retirements” was now 240, the “ordinary retirements” category was eliminated altogether and replaced with “retirees” with a total number of 297.

The numbers in the 2012 report reduced the disability retirements from 94% to 45%. The actuarial report was amended several more times following the OIG’s query. From 2013–2015 the Pension Board approved 80% disability retirements; however, the actuarial report kept reducing the disability retirement numbers. The 2013 report reduced the disability retirements to 42.5%, the 2014 report reduced it again to 40%, and the 2015 report also reported a 40% disability retirement rate.³

This discrepancy was discussed at the Pension Board meeting on August 6, 2014. The NOFD Superintendent and the Chief Financial Officer (CFO) stated that they vehemently opposed falsely representing the number of disability retirements in the actuarial report. A review of the minutes of the Pension Board meeting did not find any mention of their stated opposition. The NOFD Superintendent and the CFO also advised that the Pension Board issued a tax form 1099 to each retiree and reported to the Internal Revenue Service the amount of monies paid to each recipient.

These 1099s treat 50% of every retiree’s disability pension as exempt from federal income tax. Although the actuarial reports from 2013-2015 listed only 42.5%, 40% and 40% disability retirees, the Pension Board actually issued 1099s to 80% of the retirees that treated 50% of their disability pension as exempt from federal income tax.

Regardless of what the actuarial report states, the City must pay these costs for all retirees issued a 1099 with disability retirement benefits. Reducing the number of disability retirements in the actuarial report while issuing 1099s to a greater number of disability retirees created the appearance that the Pension Board intentionally attempted to deceive the public as to the accurate number.

² Refer to Appendix 1.

³ Refer to Appendix 2.

THE PENSION BOARD APPROVED DISABILITY PENSIONS FOR NEW ORLEANS FIRE DEPARTMENT RETIREES AT A RATE 8 TIMES GREATER THAN THE (STATE OF LOUISIANA) FIREFIGHTERS' RETIREMENT SYSTEM

The Pension Board approved 76 retirements during 2013-2015: 61 or 80% were disability retirements and 15 or 20% were regular retirements.⁴ The 61 disability retirements (80%) included seven firefighters who were awarded a 66 ²/₃% disability for serious injury and/or who retired with a heart/lung ailment. The (State of Louisiana) *Firefighters' Retirement System Actuarial Valuation as of June 30, 2015*, reported 1,790 retirees. Only 187 or 10% were disability retirements. The remaining 1,603 or 90% were regular retirements.⁵ The (State of Louisiana) Firefighters' Retirement System requires **that income earned after a disability retirement be offset by deducting the amount from the retirement payment.**

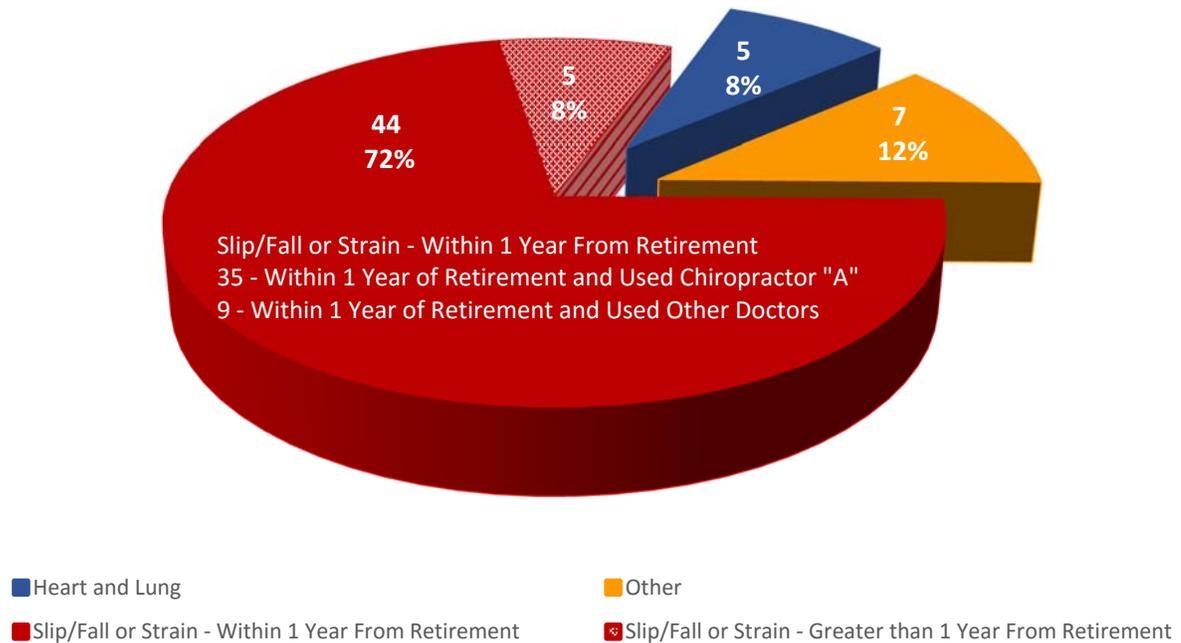
NUMBER OF "SLIP & FALLS" WITHIN 1 YEAR OF RETIREMENT

As shown in Figure A, of the 61 disability retirements, 44 or 72% had a "slip and fall" or "strain" occurring less than one year from their retirement. Of these 44, 35 went to the same chiropractor who diagnosed them as being disabled. Over the last ten years, a total of 87 New Orleans firefighters had a "slip and fall" or "strain" occurring less than one year from their retirement and went to the same chiropractor who diagnosed 100% of them as being disabled.

⁴ Refer to Appendix 3.

⁵ Refer to Appendix 4.

Figure A: Types of Disability Injuries for All Firefighters Who Retired From January 1, 2013 – December 31, 2015



The NOFD offered “transitional” or “light duty” to the firefighters who had suffered a slip and fall injury diagnosed and treated by the aforementioned chiropractor. For example, the NOFD offered various “light duties” to be performed for as little as four hours a day including:

- promote knowledge of fire education and safety through community programs, including instruction and presentation;
- safeguard fire department property against damage or loss, including maintaining watch over facility and grounds of fire station;
- answer telephones; and
- control the buttons which open and close the doors.

In every one of the examples of proposed “light duty” the same chiropractor advised that the firefighter was unable to perform any of those duties. Even though the Pension Board determined that these firefighters were permanently disabled from performing the duties of a New Orleans firefighter, we found that a number of them found work in other fields that required substantial physical effort: an Auxiliary Police Officer; carpenters; plumbers; electricians; and contractors.

In 2015, the City of New Orleans paid \$5,514,949 in total disability benefits to NOFD retirees.⁶ The City paid out an additional \$3,399,749 in associated disability costs, including medical,

⁶ The City of New Orleans employs a third-party administrator to manage the workers’ compensation program, which includes all expenses associated with the retiree’s disability.

administrative and rehabilitation for the NOFD retirees through the third-party administrator.⁷ For 2015, total disability payments (workers compensation) and other related expenses associated with NOFD disability retirees cost the City of New Orleans \$8,914,698. **If the Pension Board followed the (State of Louisiana) Firefighters' Retirement System and reduced the NOFD disability retirees to approximately 10%, the City would reap annual cost savings of approximately \$6,240,288.** (Table 1) **The cost of these pension attributes from 1999-2015 was approximately \$106.1 million.**

Table 1: Potential Savings if % of Disability Retirements Conformed to (State of Louisiana) Firefighters' Retirement System Average⁸

Description	Amount	Estimated Savings %	Estimated Savings Per Year
Total Disability Payments Incurred by Retirees in 2015 per Third Party Administrator (TPA)	\$5,514,949	70%	\$3,860,464
Total Additional Expenses Incurred by Retirees in 2015 (medical, rehab, etc.) per TPA	\$3,399,749	70%	\$2,379,824
Total Disability Payments and Additional Expenses Incurred by Retirees in 2015 per TPA	\$8,914,698		\$6,240,288

APPLICATION OF GOVERNING STATUTE

In addition to the disability retirements previously discussed, state law provides specific guidance for calculating retirement benefits. In part, it provides that firefighters become eligible for 3.33% of their yearly compensation for each year of service, as opposed to the regular 2.5%, if they have 12 years of service AND are at least 50 years of age.⁹ The Pension Board disregarded the 50 year age requirement and awarded 3.33% to all firefighters with at least 12 years of service regardless of their age. Following these statutory provisions, Firefighter Y who retires with 30 years of service would receive \$54,391 in an annual pension. Following the Pension Board's application of statutory provisions, the same Firefighter Y who retires with 30 years of service would receive

⁷ Legal costs of \$41,202 were excluded.

⁸ 80% NOFD disability rate less 10% (State of Louisiana) Firefighters Retirement System disability rate equals 70%.

⁹ Per La. R.S. 11:3384, firefighters are entitled to 2.5% of their average 5 years' highest compensation for each year of service. Once the firefighter has more than 12 years of service AND reaches the age of 50, they are entitled to 3.33% for each year of service beyond 12 and the age of 50. Once the firefighter reaches 30 years of service, they are entitled to 3.33% of average compensation for each year beyond twelve (regardless of age). The Pension Board's application disregards the age requirement, and gives the firefighter 3.33% of his average compensation for all years of service after 12 (as opposed to 2.5% until the age 50). Also, for those firefighters who have 30 years of service, the Pension Board's application gives the firefighter 3.33% of their average compensation for all years of service (as opposed to those years of service beyond 12).

\$60,434 in an annual pension.¹⁰ The Pension Board's application resulted in an additional \$6,043 per year paid to Firefighter Y. The Pension Board's application of the statute resulted in additional payments of approximately \$2.6 million per year to NOFD retirees as shown in Table 2. **Since 1999, the Pension Board's application cost the City of New Orleans approximately \$44.2 million.**

Table 2: Total Pension Benefit Overpayment to Retirees Per Year Using the Pension Board's Application of La. R.S. 11:3384

Description	Amount
Additional Amounts Paid to 76 Retiree Firefighters Who Retired from January 1, 2013 – December 31, 2015 as Applied by the Pension Board	\$324,657
Average Overpayment Per Firefighter (76)	\$4,272
# Retiree and Disability Firefighters Per 2015 Actuary Report	X 609
Total Estimated Pension Benefits Overpayment Per Year	\$2,601,648

FIREFIGHTERS WHO RETIRED ON DISABILITY EARNED MORE THAN 100% OF THEIR PRE-RETIREMENT EARNINGS

The cumulative effects of the Pension Board's actions created a pension system that resulted in firefighters receiving larger amounts in disability retirements than they earned in their last year of employment. Rather than earning \$66,996, a firefighter with a disability retirement would earn \$93,774.¹¹ Of the 61 disability pension retirements, 53 or 87% actually earned more each year in retirement than they did from their last 12 months of pre-retirement earnings. The payments in excess of 100% to these 53 firefighters cost the City of New Orleans an additional \$1,115,154 in 2015.

FIREFIGHTERS' PENSION BOARD

The Pension Board cost taxpayers an additional and unnecessary \$8.8 million in 2015¹² and approximately \$150.3 million for the period of 1999-2015.¹³ The Pension Board accepted false actuarial reports, ignored the excessive number of disability retirements and inflated retirement pensions by disregarding the statute's age requirement. The firefighters' pension system should be required to mirror the (State of Louisiana) Firefighters' Retirement System in applications of law, which would save the City about \$8.8 million each year.

¹⁰ Refer to Appendix 5.

¹¹ Refer to Appendix 6.

¹² \$6,240,288 assuming a 10% disability rate plus \$2,601,648 for erroneous application of the statute.

¹³ Refer to Appendices 7 and 8.

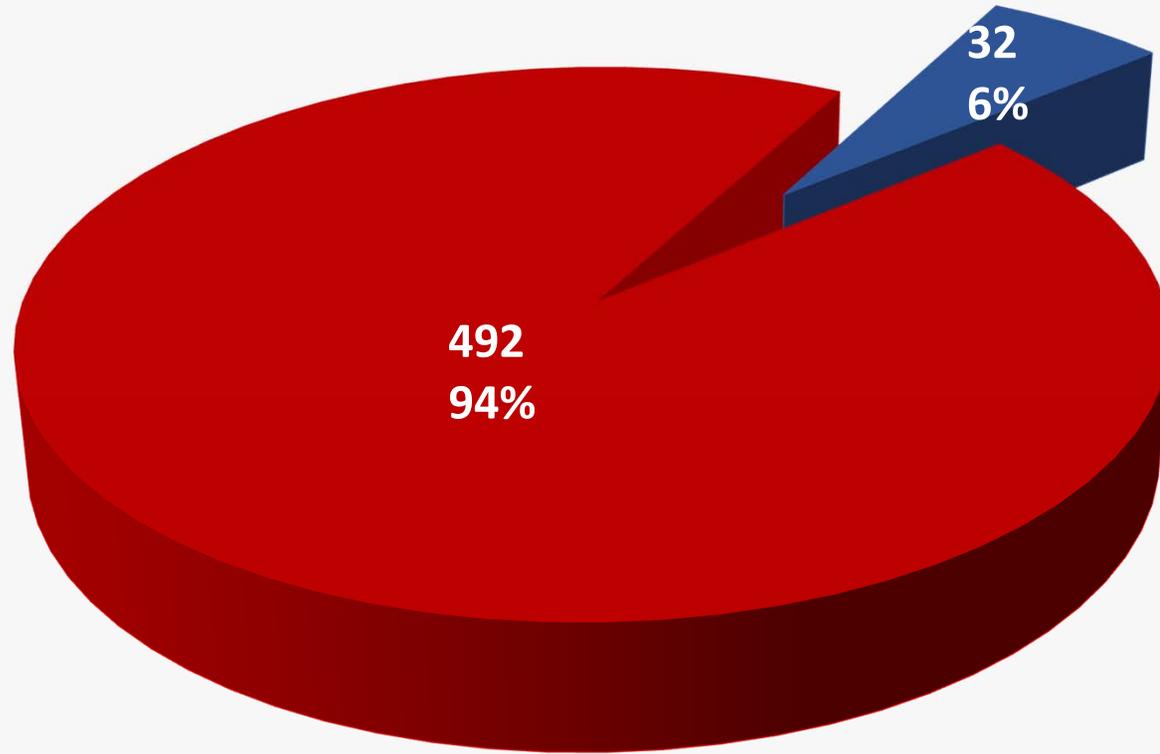
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In the longer term, the magnitude of the waste associated with this Pension Board warrants an extensive evaluation of its actions and identification of options for ending the control by officials who are not responsible for paying the cost. The evaluation will be conducted by the Office of Inspector General.



E.R. Quatrevaux

January 1, 2011 Actuarial Valuation Report: Disability and Ordinary Retirements



■ Disability Retirement ■ Ordinary Retirement

Actuarial Valuation Reports

January 1, 2011 – 94% Disability Retirement

(August 4, 2011 – OIG Met with Pension Board)

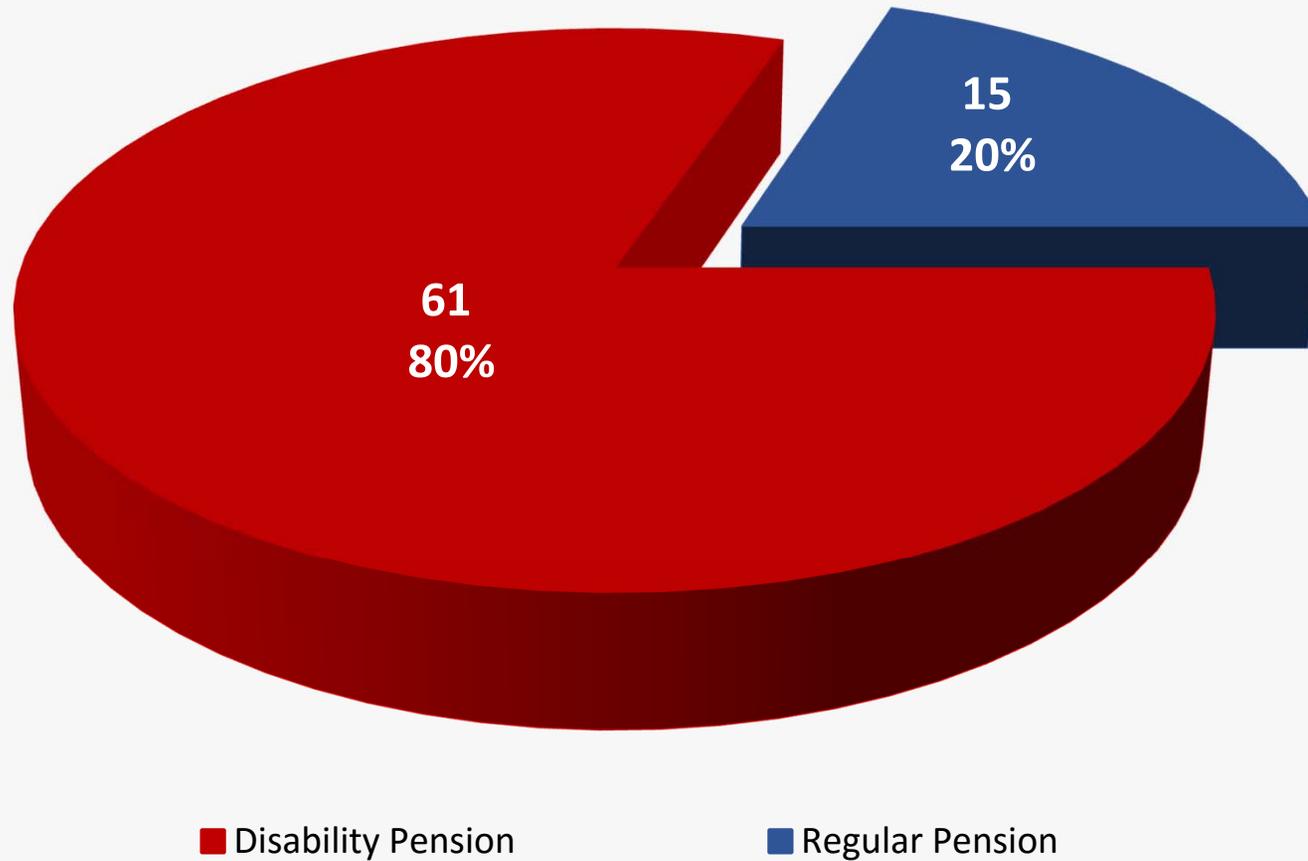
January 1, 2012 – 45% Disability Retirement

January 1, 2013 – 42.5% Disability Retirement

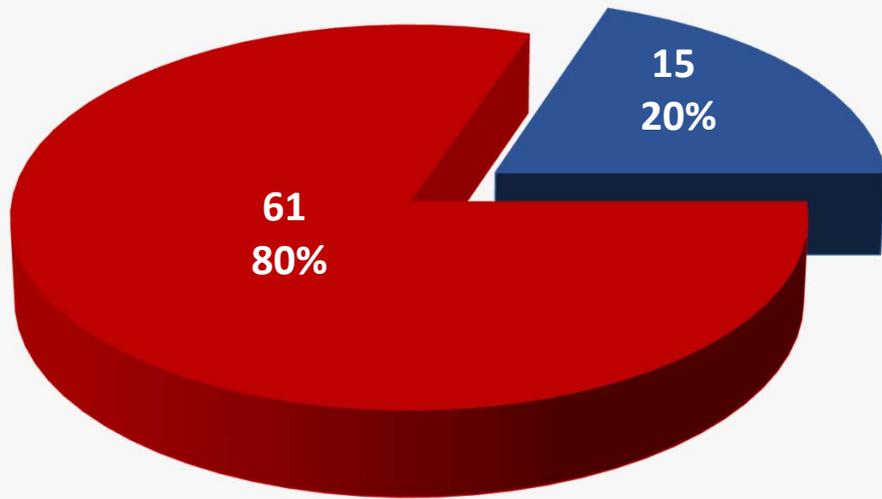
January 1, 2014 – 40% Disability Retirement

January 1, 2015 – 40 % Disability Retirement

**Type of Pension Received By New Orleans Firefighters Who Retired From
January 1, 2013 - December 31, 2015**

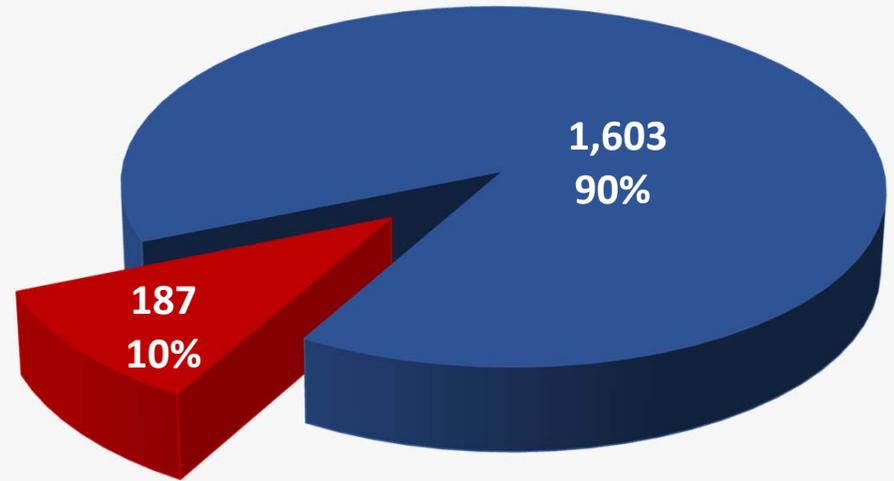


**Type of Pension Received By New Orleans
Firefighters Who Retired From
January 1, 2013 - December 31, 2015**



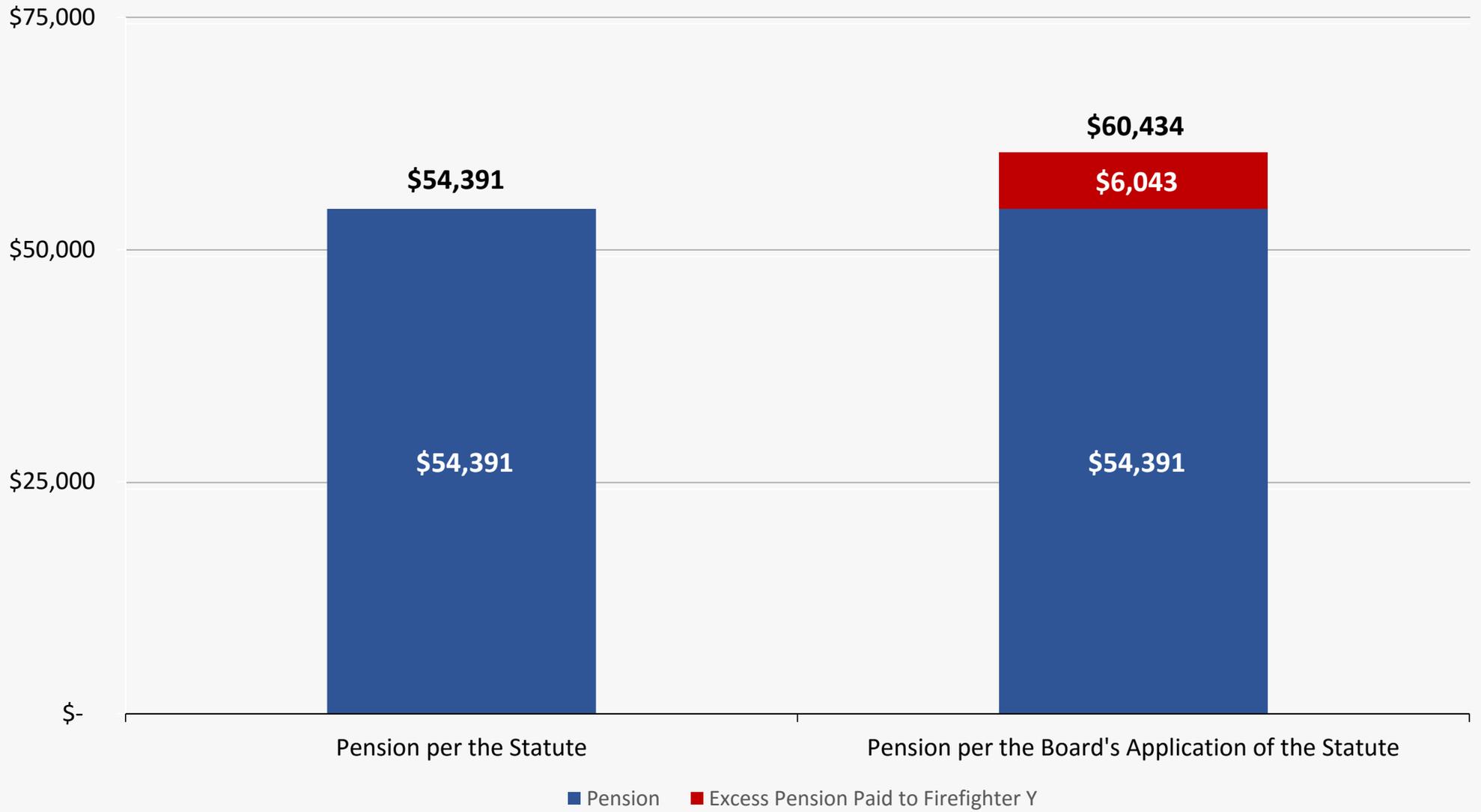
■ Disability Pension ■ Regular Pension

**Type of Pension Received by Louisiana State
Firefighters as of June 30, 2015**

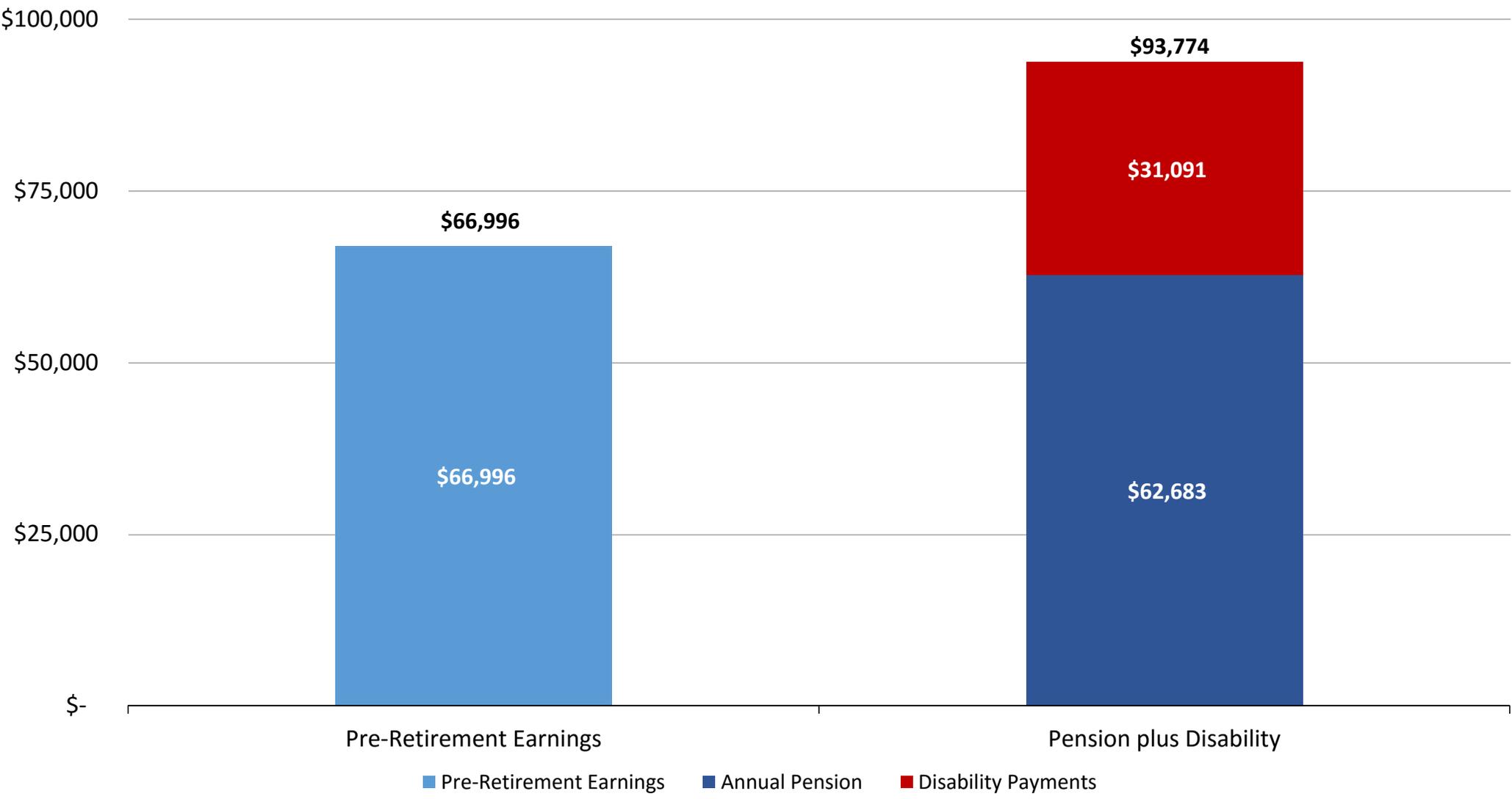


■ Disability Pension ■ Regular Pension

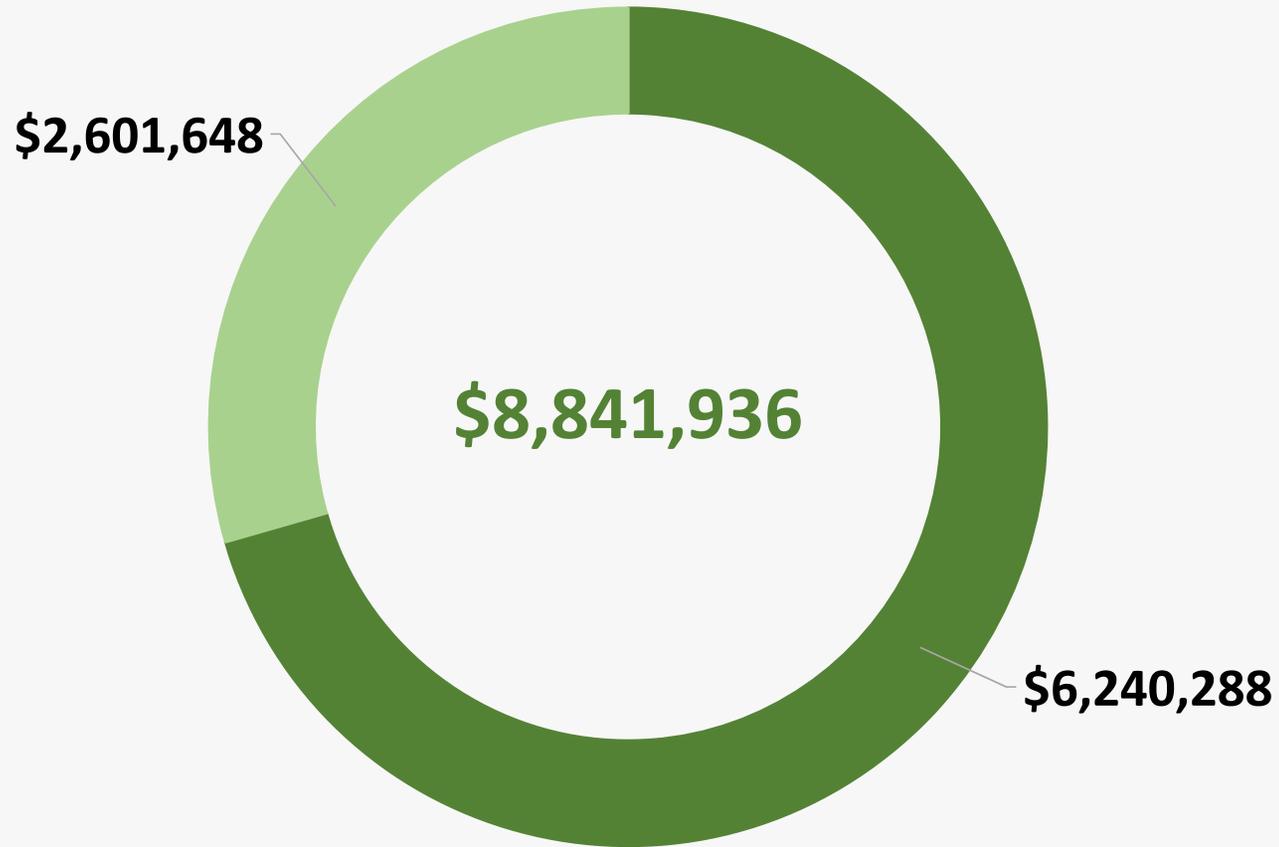
Firefighter Y's Pension per the Governing Statute vs. the Board's Application of the Statute



Firefighter X's Annual Earnings Before and After Disability Retirement

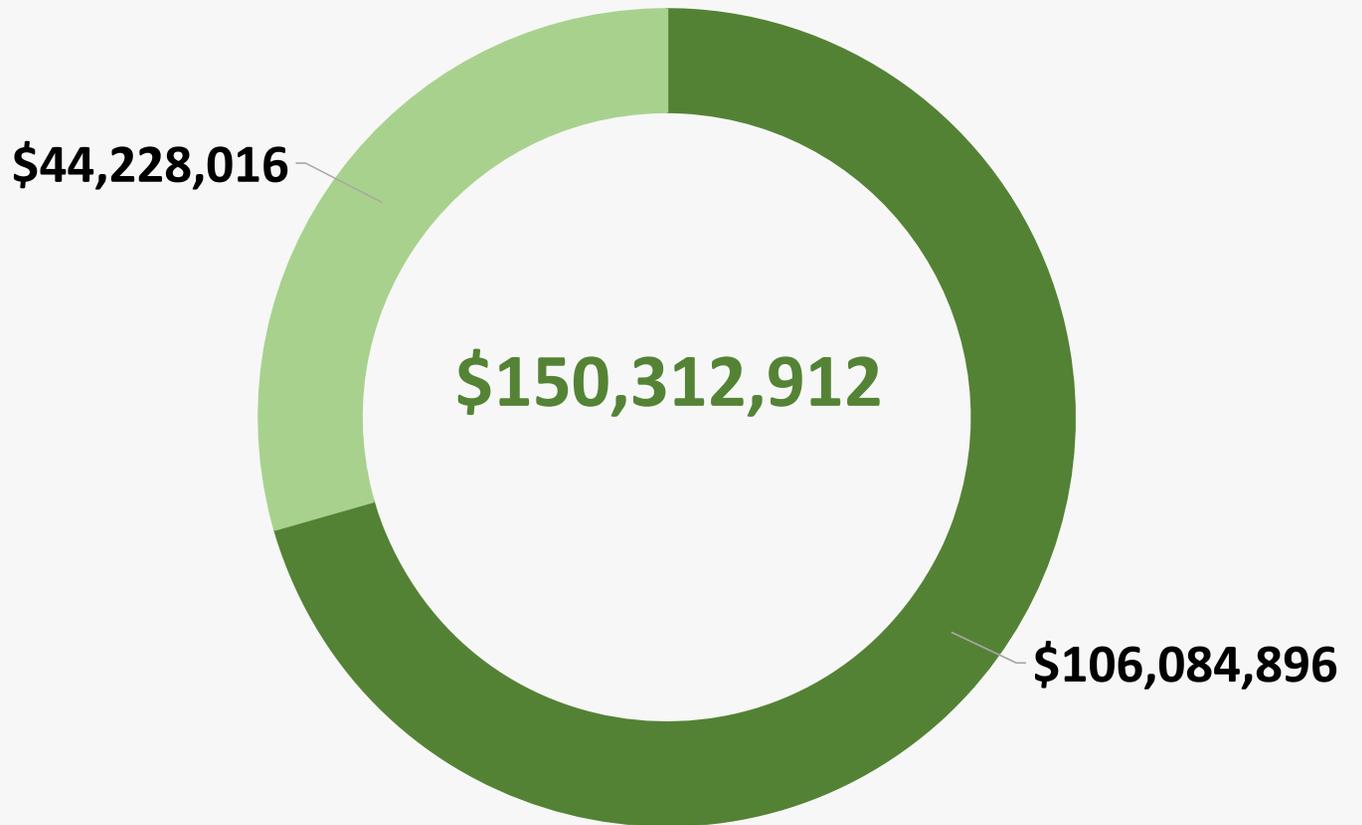


How Much Money Could the City of New Orleans Save Per Year?



- Total Estimated Avoidable Disability Payments and Additional Expenses in 2015
- Total Pension Benefits Overpayment as a Result of the Misapplication of the Governing Statute

Money the City of New Orleans Spent from 1999 – 2015 on Questionable Disability and Pension Costs



- Total Estimated Spent on Avoidable Disability Payments and Additional Expenses
- Total Pension Benefits Overpayment as a Result of the Misapplication of the Governing Statute