

## CHAPTER 41

## PUBLIC EMPLOYEES RETIREMENT (EXCEPT TEACHERS)

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## SUBCHAPTER I

## WISCONSIN RETIREMENT FUND

**41.01 Wisconsin retirement fund.** (1)

**PURPOSE.** The purpose of this fund is to provide for the payment of annuities and other benefits to employes and to beneficiaries of employes of the state of Wisconsin and municipalities in the state, thereby enabling such employes to provide for themselves and their dependents in case of old age, disability and death, and thereby effecting economy and efficiency in the public service by furnishing an orderly means whereby employes who become aged or otherwise incapacitated may, without hardship or prejudice, be retired from active service.

(2) **CREATION OF FUND.** A retirement and benefit fund to be operated and maintained in accordance with this subchapter is hereby created. This fund shall be known as the "Wisconsin retirement fund." The fund shall with respect to the accumulation of credits and the payment of annuities and benefits therefrom, be divided into 2 divisions to be known as the fixed annuity division and the variable annuity division. Each division shall be separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with. Except where it is otherwise specifically provided, or where the context otherwise requires, this subchapter shall apply equally to each division of the fund. Section 41.12 shall control with respect to the variable annuity division.

**41.02 Definitions.** In this subchapter:

(1) "Director" means director of the bureau which is responsible for the administration of the Wisconsin retirement fund.

(2) "Board" means the Wisconsin retirement fund board.

(3) "Fund" means the Wisconsin retirement fund.

(4) "Municipality" means the state and any city, village, town, county, common school district, high school district, unified school district, county-city hospital established under s. 66.47, sewerage commission organized under s. 144.07 (4) or a metropolitan sewerage district organized under ss. 66.20 to 66.209, or any other unit of government, or any agency or instrumentality of 2 or more units of government now existing or hereafter created within the state.

(5) "Participating municipality" means any municipality included within the provisions of this fund.

(6) "Employee" means any person who:

(a) Receives earnings as payment for personal services rendered to or for the benefit of any participating municipality.

(b) Is employed in a position normally requiring actual performance of duty during not less than 600 hours a year in such municipality, except that a participating employe who is simultaneously employed by another participating municipality shall be included under the fund by such other participating municipality for his service thereto, and

(c) Has completed at least 6 months' continuous service or 12 months' total service for the

municipality by which such person is employed when such person otherwise first becomes eligible for participation in the fund, provided that leave of absence due to service connected disability compensated under ch. 102 shall be considered as continuous service but he shall not become a participating employe until after normal contributions become due. This requirement shall not apply to persons included under the state teachers' retirement system for at least 6 months.

(d) It is hereby declared and determined that the offices of lieutenant governor, representative to the assembly, state senator, chief clerk and sergeant at arms of the assembly, and chief clerk and sergeant at arms of the senate require the actual performance of duty for more than 600 hours in each year.

(7) "Participating employe" means an employe other than an annuitant receiving a retirement annuity or a disability annuity who is currently in the service of a participating municipality, or an employe who is on a leave of absence, subject to the limitations in s. 41.07 (1) (b), but after December 31, 1965, no person who becomes an employe on or after the date he attains age 70 if not employed in a protective occupation, or age 63 if employed in a protective occupation, shall become a participating employe. After June 30, 1974, no person employed in a protective occupation who becomes an employe on or after the date he attains age 58 shall become a participating employe.

(8) "Group A participant" means a participant whose creditable service determined pursuant to s. 41.09 for employment by a participating municipality terminates prior to January 1, 1966.

(9) "Group B participant" means a participant whose creditable current service determined pursuant to s. 41.09 for a participating municipality commences prior to January 1, 1966, and terminates after December 31, 1965, provided such participant was a participating employe on January 1, 1966, or a Group A participant whose creditable service determined pursuant to s. 41.09 terminates prior to January 1, 1966, but after September 12, 1965.

(10) "Group C participant" means a participant whose creditable current service determined pursuant to s. 41.09 for a participating municipality commences on or after January 1, 1966, or an annuitant or participant who, after December 31, 1965, becomes a participating employe and is required by s. 41.09 (2) to be considered a new participant, but he shall be a Group C participant only with respect to his subsequent creditable service.

(11) (a) "Protective occupation participant" means any participant whose principal duties involve active law enforcement or active fire suppression or prevention, provided such duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. This definition is deemed to include any participant whose name is certified to the fund as provided in par. (d) and who is a conservation warden, conservation patrol boat captain, conservation patrol boat engineer, conservation pilot, conservation patrolman, forest fire control assistant, member of the state patrol, state motor vehicle inspector (if hired prior to January 1, 1968), policeman, including the chief and all other officers, fireman, including the chief and all other officers, sheriff, undersheriff, deputy sheriff, county traffic policeman, state forest ranger, or fire watchman employed by the Grand Army home for veterans.

(b) "Protective occupation participant" also means any state correctional-psychiatric officer, state investigator whose primary duties consist of investigational work in enforcing compliance with alcoholic beverage, gambling, prostitution or cigarette laws or special agent in the division of criminal investigation of the department of justice whose name is certified to the fund as provided in par. (d). A participating employe holding a position designated as a protective occupation by this paragraph on July 1, 1969 will become a protective occupation participant on such date, provided if he has attained the age of 50 on or before such date he submits his written election to be included under this paragraph to the board not later than June 1, 1969.

(c) Any participant holding a position which previously qualified him as a protective occupation participant but whose position has been deleted from this subsection by chapter 355, laws of 1967, shall cease to be a protective occupation participant effective June 30, 1969, but all service prior to such date as a protective occupation participant shall be considered creditable service as a protective occupation participant.

(d) Each participating municipality and each state agency shall certify to the fund on July 1, 1969, and quarterly thereafter, in the manner prescribed by the board, the names of all participating employes classified as protective occupation participants determined in accordance with this subsection. An employe may contest the certification because of its inclusion or omission of his name by filing an appeal to the board. The board may investigate the relevant facts and may, on request of either party, hold a hearing. Upon completion of its investigation and hearing, if any, the board shall make a determination which it shall certify to the participating municipi-

pality or the appropriate state agency. The board's determination of an employee's status under this section shall remain in effect until receipt by the board of certifications changing it, which may in turn be subject to appeal hereunder.

(e) Each determination of the status of a participant under this subsection shall include consideration, where applicable, of the following factors:

1. A "policeman" is any officer or employe of a police department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement even though such an employe is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement, but not excepting any person regularly employed and qualifying as a patrolman, or equal or higher rank, irrespective of the duties to which he is assigned.

2. A "fireman" is any officer or employe of a fire department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active fire suppression or prevention even though such an employe is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active fire suppression or prevention, but not excepting any person regularly employed and qualifying as a fireman, hoseman, or equal or higher rank, irrespective of the duties to which he is assigned.

3. A "deputy sheriff" or a "county traffic policeman" is any officer or employe of a sheriff's office or county traffic department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement even though such an employe is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement, but not excepting any person regularly employed and qualifying as a deputy sheriff or county traffic policeman irrespective of the duties to which he is assigned.

(f) Each participating employe who is a protective occupation participant on July 1, 1969, shall be granted creditable service as a protective occupation participant, determined in accordance with s. 41.09, for all service prior to July 1, 1969, which was previously considered protective occupation employment or which was performed in a position designated in this

subsection as a position in which an individual would be a protective occupation participant.

(12) The definition of employe shall not include persons:

(a) Who are engaged in teaching within the meaning of s. 42.20 (21).

(b) Who are contributing to any policemen's or firemen's pension fund by virtue of s. 61.65 or 62.13 (9), (9a) or (10).

(c) Who are contributing to the conservation wardens pension fund, except any such person who prior to January 1, 1948, irrevocably renounced in accordance with law all present, future and contingent benefits under such fund.

(d) Who are employed under a contract involving the furnishing by such persons of more than their personal services.

(e) Who are customarily engaged in an independently established trade, business or profession and whose services to a participating municipality are not compensated for on a payroll of that municipality.

(i) Who are elected to office by vote of the people unless any such elected person requests the board in writing to be included within this fund. Any elected person included at his request shall be included during any subsequent term or part thereof which he may serve in the same office or in any other elective office in the same municipality or any other participating municipality, and at all times while he is included shall be subject to the compulsory retirement provisions of s. 41.11 (1). Persons so electing to participate shall be considered employes on the effective date of participation of the employing municipality except as provided in s. 41.07 (1) (a) 5, only if such election is received by the board within 90 days of such effective date and if such person was in the service of such municipality on such effective date. In all other cases any person so electing to participate shall become an employe as of the first day of the month following the receipt by the board of notice of such election. The administrative determination to the effect that the compulsory retirement provisions in s. 41.11 (1) apply to all persons who have once elected or shall once elect to be included in accordance with this paragraph is hereby declared to express and confirm the intention of the legislature.

(m) Are patients or inmates of hospitals, homes or institutions performing service therein.

(n) Who are members of a retirement system of a city of the 1st class and who are employes of a vocational, technical and adult education district created under s. 38.155 on the date such district is created.

(13) Any elected official of any participating municipality other than the state who prior to

January 1, 1965, had been a participating employe of that municipality, and who became an elected official of that municipality prior thereto, and who, notwithstanding the failure to make the election required by sub. (12) (i), continued during all of said service as a participating employe and as an elected official to make normal contributions, shall be deemed to have so elected prior to his assumption of office if the written election required by sub. (12) (i) is received by the fund not later than August 31, 1965, and his rights and credits as a participating employe under said fund will thereupon be ratified and confirmed.

(14) Any participating employe who originally obtained membership in the Wisconsin retirement fund under provisions of the statutes relating to supreme court justices, circuit judges, county judges, members of the state legislature or state constitutional officers who later accepts employment in a state position subject to this subchapter without the occurrence of a break in service, will continue to have his retirement annuity computed in accordance with s. 41.11 (6) (c) 3. b providing said employe pays into the retirement fund a sum equal to the difference between the contributions required under s. 41.07 (2) (a) 3 and the actual contributions said member made under s. 41.07 (2) (a) 1 for all service rendered under s. 41.07 (2) (a) 1, and makes all future contributions to the fund pursuant to s. 41.07 (2) (a) 3.

(15) "Participant" means any person included within the provisions of this fund by virtue of being or having been a participating employe.

(16) "Prior service" means the period beginning on the first day upon which any participating employe first became an employe of the municipality by which such employe was employed on the effective date of participation of such municipality, and ending on such effective date, excluding all intervening periods during which such employe was separated from the service of such municipality following a resignation, dismissal, layoff or expiration of any term of appointment or election as certified by the governing body of such municipality. For a person becoming a participating employe of a municipality on or after January 1, 1966, creditable prior service for that municipality shall be determined pursuant to s. 41.09.

(17) "Current service" means the period beginning on the day for which the employe first receives credit as a participating employe and ending on the day of the latest separation from the service of all participating municipalities, excluding all intervening periods during which such employe shall not receive, nor have a right to receive, earnings from a participating municipi-

pality. For service on or after January 1, 1966, creditable current service shall be determined pursuant to s. 41.09.

(18) "Earnings" means an amount equal to the sum of the total amount of money earned by an employe of a municipality for personal services rendered to or for such municipality and the money value, as determined by rules prescribed by the governing body of the employing municipality, of any board, lodging, fuel, laundry and other allowances provided for such employe in lieu of money, but excluding uniforms purchased directly by the municipality and excluding employer contributions for insurance and retirement. For any participating municipality earnings paid to the individual directly by any other unit of government shall be excluded for that municipality.

(19) "Rate of earnings" means the actual rate upon which the earnings of any employe are calculated at any time, as certified by the governing body of the employing municipality in a written notice received by the board, assuming that, unless otherwise specified, the following are equivalents: 2,000 hours, 250 days, 50 weeks, 12 months, one year.

(20) "Final rate of earnings" means the monthly rate of earnings obtained by dividing the employe's total earnings during the period of the 5 consecutive calendar years in which his total earnings were the highest, by the number of months constituting the calendar quarter years in such period during which any earnings were received by such employe; provided that the earnings for all calendar years of prior service of any employe shall be considered as being equal to earnings determined at the rate upon which prior service credits are granted under s. 41.08 (1) (a) 1 and 8.

(21) "Formula final rate of earnings" means, with respect to retirement annuities computed pursuant to s. 41.11 (6) (c):

(a) The monthly rate of earnings obtained by dividing a) the participant's total earnings received from a participating municipality after the commencement of his creditable service and during the 5 calendar years in which such earnings were the highest during the 10 calendar years (excluding any year more than 5 years prior to the effective date) preceding both 1) the date of his separation from the service of that municipality and 2), the 5th anniversary (or the 3rd anniversary if a protective occupation participant) of his normal retirement date or January 1, 1966, if later, by b) the number of months of service creditable to him for such 5 years; if a participant has earnings for less than 5 such calendar years his final rate of earnings is the rate obtained by dividing his total earnings for

all such years by the total number of months of his creditable service therefor; or

(b) If so elected by a participant, formula final rate of earnings means, but only with respect to any retirement annuity computed for a participant pursuant to s. 41.11 (6) (c) 3. b, one-twelfth of the annual statutory compensation or salary which would have been payable to such participant during the month preceding the last month in which such participant was a participating employe in a position or office specified in s. 41.11 (6) (c) 3. b if he had not been prohibited by law from receiving an increase in such compensation or salary during his term of office.

(c) Effective July 1, 1974, formula final rate of earnings shall not include any earnings received by a protective occupation participant from a participating municipality after the calendar quarter year in which such participant attains age 58 or June 30, 1974, whichever occurs later.

(22) "Final excess OASDHI earnings" means, with respect to retirement annuities computed pursuant to s. 41.11 (6) (c):

(a) The monthly rate of earnings obtained by dividing a) the participant's total earnings for the 5 calendar years, or such lesser period, determined pursuant to sub. (21) (a), in excess of the amounts subject to contributions under subch. VI of ch. 40, by b) the number of months of service creditable for such years, but such monthly rate shall not exceed the amount by which the formula final rate of earnings of the participant exceeds \$550; or

(b) If a participant has elected to have his formula final rate of earnings determined in accordance with sub. (21) (b), final excess OASDHI earnings means, but only with respect to any retirement annuity computed pursuant to s. 41.11 (6) (c) 3. b, the monthly rate of earnings equal to the excess of a) the formula final rate of earnings over b) the greater of one-twelfth of the maximum annual amount of earnings subject to contributions under subch. VI of ch. 40 during the month preceding the last month in which a participant was a participating employe in a position or office specified in s. 41.11 (6) (c) 3. b, or \$550.

(c) Final excess OASDHI earnings of any participant not subject to subch. VI of ch. 40 shall be determined as if he were subject to subch. VI of ch. 40.

(23) "Normal retirement date" means the day on which a participant attains the age of a) 60 years if he is or was a protective occupation participant; b) or 65 years otherwise; but after June 30, 1974, normal retirement date for each protective occupation participant means the day on which such participant attains the age of 55 years, and after June 30, 1969, for purposes of s.

41.11 (6) (c) 3 only, normal retirement date for each protective occupation participant means the day on which such participant attains the age of 55 years. The normal retirement date of any participant shall be determined by the employment classification of the participant at the time it is necessary to make any determination or to take any action relative to such participant for purposes of the fund, notwithstanding the fact that a participant may have been in one or more different employment classifications at any previous time.

(24) "Annuitant" means a person receiving a retirement annuity, beneficiary annuity or a disability annuity from this fund.

(25) "Beneficiary" means the person so designated for that particular purpose by a participant or annuitant in the last written designation of beneficiary on file with the board at the time of death. In the absence of any effective designation of beneficiary the beneficiary shall be the person determined by the court having jurisdiction to be a surviving wife of the participant or if there is no surviving wife, the persons determined by such court to be minor children of the participant. If no person so designated by the participant survives, or if no designation is on file, or where there is no court determination as herein provided, the estate of such participant or annuitant. A designation of beneficiary may be signed and filed by a guardian when accompanied by a certified copy of an order of a circuit or county court approving the specific terms thereof.

(26) "Annuity" means a series of monthly payments payable at the end of each calendar month during the life of the annuitant except as provided in ss. 41.11 (7) and (8) and 41.15 (6) and (8). Each such annuity shall accrue from its beginning date as specified in s. 41.11 (6) (a) 2, 41.13 (2) (a) 3 or 41.15 (2). The first instalment of each annuity shall be due on the last day of the calendar month in which the annuity was approved and shall be the amount of annuity accrued through such due date. The last payment shall be made as of the end of the calendar month prior to the month in which the annuitant dies, except as provided in ss. 41.11 (7) and (8) and 41.15 (6) and (8).

(27) "Variable annuity" means any annuity provided by credits segregated for a variable annuity pursuant to s. 41.12 the amount of which will change in accordance with s. 41.12 (10). A "fixed annuity" is any other annuity.

(29) "Governing body" means the common council in cities; the village board in villages, the town board in towns, the county board in counties, the school board in school districts except as to schools in a city school district, or the

board, commission or other governing body having the final authority for any other unit of government or for any agency or instrumentality of 2 or more units of government, or any agent duly appointed by any such body and designated in a written notice filed with the board as being authorized to act for any such body in matters pertaining to the fund. For the state there shall be a governing body for each constitutional office, department and independent agency, the court administrator and the legislature which governing body shall be the head of such state unit. The head of any such state unit may, in a written designation filed with the board, name an employe of the unit to act for him in all matters pertaining to the fund.

(30) "Effective date" means the date upon which the provisions of this fund become applicable to any participating municipality as provided in s. 41.05.

(31) "Effective rate of interest" means the rate determined by the board from the experience of the calendar year or part thereof for the fixed annuity division which, after making provision for the reserves authorized by s. 41.20 (2) and after providing for interest requirements on the fixed annuity reserves, will distribute the remaining investment income from assets of the fixed annuity division for the year, less the administrative costs of the fixed annuity division for the year, to the balances in the accounts of the individual employes in the fixed annuity division and to the municipality accumulation accounts.

(32) "Prescribed rate of interest" means the rate of interest to be used for all calculations of amounts of annuities and benefits, as determined and certified by the board on the basis of the probable average effective rate of interest earnable on investments on a long-term basis.

(33) "Calendar quarter year" means a period of 3 months beginning on January 1, April 1, July 1 or October 1 of any year. Solely for the purpose of determining the number of calendar quarter years of completed service, a person entitled to current or prior service credit for any part of a calendar quarter year shall be deemed to have completed service for such quarter year.

(34) "Accrued liability" means the present value at any time of the future contributions payable by a participating municipality as determined pursuant to s. 41.10 (2) (a).

#### 41.03 Wisconsin retirement fund board.

(1) (a) The Wisconsin retirement fund shall be construed to be a trust and each member of the Wisconsin retirement fund board shall be deemed a trustee.

(b) Any member of the board shall cease to be a member of the board upon losing the status upon which his appointment was based.

(2) (a) The director may correct any annuity or benefit if the total amount of any such correction shall not exceed \$5 for any benefit or monthly annuity. The director shall report all such corrections at the subsequent meeting of the board.

(b) The director shall be in charge of the technical administration of the fund and shall have such additional powers and duties as are properly delegated by the board.

(3) The department of justice shall furnish legal counsel and shall prosecute or defend all actions brought by or against the board.

(4) The state treasurer shall be the treasurer of the fund and shall be responsible for the proper handling of all the assets of the fund in accordance with this subchapter.

#### 41.04 Powers and duties. (1) The board shall:

(a) Mail notice of each meeting to each trustee at least 5 days prior to the meeting.

(b) Consider and pass on all applications for annuities and benefits, authorize the payments of all annuities and benefits and terminate any such payment, all in accordance with ss. 41.01 to 41.22. Separation benefits, death benefits, retirement annuities, beneficiary annuities and disability annuities which do not involve any medical uncertainty as to the existence of a disability may be processed and paid upon the initial approval of the director and the actuary but no such annuity shall be continued beyond the date of the meeting of the board next following the first payment thereof unless the payment of the annuity is then authorized by the board. The director with the approval of the legal advisor may suspend an annuity pending final action by the board when in their judgment the annuitant is not eligible to receive such annuity.

(c) Certify all normal employe and municipality contribution rates and the prescribed rate of interest as certified in writing by the actuary and notify all participating municipalities thereof.

(d) Approve the tables to be used for computing annuities and benefits after certification thereof in writing by the actuary.

(e) Have the accounts of this fund audited at least annually by the legislative audit bureau.

(f) Submit an annual statement to the governing body of each participating municipality, and to any participating employe upon request, as soon after the end of each calendar year as possible. Such statement shall include a balance sheet, showing the financial and actuarial condition of the fund as of the end of the calendar

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year, a statement of receipts and disbursements during such year, a statement showing changes in the assets, liability, reserve and surplus accounts during such year, information as to investments and such additional statistics as are deemed necessary for a proper interpretation of the condition of the fund. Upon written request a detailed statement of investments shall be available to each participant or participating municipality.

(g) Submit once each year to each participant currently making contributions a statement of his account together with appropriate explanatory material, and furnish such statement and explanatory material to any other participant upon request.

(h) Determine and direct the investment board and the state treasurer as to the limitations on the amounts of cash to be invested in order to maintain such cash balances as are deemed advisable to meet current annuity, benefit and expense requirements and the general policy to be followed with respect to investments of the fund.

(i) Keep a permanent record of all the proceedings of the board.

(j) Select an actuary or an actuarial firm under a contractual agreement for the purpose of carrying out the necessary actuarial requirements of the fund, and employ or select such additional administrative, clerical, medical, legal and other employes or independent contractors as shall be required for the administration of the fund. The actuary shall be the technical advisor of the board and in addition to general advice he shall:

1. Make a general investigation immediately upon the establishment of the fund and at least once every 3 years thereafter of the experience of the fund as to mortality, disability, retirement, separation, interest and employe earnings rates and to certify as a result of each such investigation, the tables to be used for computing annuities and benefits and for determining the premiums for disability purposes, and the prescribed rate of interest.

2. Determine the proper rates of municipality contributions under s. 41.10.

3. Make an annual valuation of the liabilities and reserves required to pay both present and prospective benefits.

4. Compute and certify the actuarial figures on the annual financial statements of the board.

5. Certify the amounts of each annuity and benefit granted by the board.

6. Advise the board on any matters of an actuarial nature affecting the soundness of the fund or requiring any changes for more satisfactory operation.

(2) The board may:

(a) Compel witnesses to attend meetings and to testify upon any necessary matter concerning the fund and allow fees not in excess of the statutory provisions.

(b) Request such information from any participating employe or from any participating municipality as is necessary for the proper operation of the fund.

(c) Determine the length of prior service from such information as is available. Any such determination shall be conclusive as to any such period of service unless within 2 years of the issuance of the first individual statement to any employe the board reconsiders any such case and changes the determination. Notwithstanding the foregoing provisions of this paragraph, in any case where the determination of prior service credits has been made and such 2 years have expired, the board may change such determination provided the municipality certifies that such determination was the result of a purely clerical or typographical mistake and produces adequate supporting information.

(d) Accept any gift, grant or bequest of any money or property of any kind, for the purposes designated by the grantor if such purpose is specified as providing cash benefits to some or all of the participating employes or annuitants of this fund; or, if no such purposes are designated, then for the purpose of distribution to all of the participating employes at the end of the year in the same proportion as the interest at the effective rate is allocated for the year.

(e) Establish rules for the efficient administration of the fund and make, amend or repeal rules which change the time or period within which or by which or for which reports must be made or other acts must be performed.

(f) Carry on any reasonable activities deemed necessary to carry out the intent and purpose of this fund in accordance with this subchapter.

(g) Delegate powers and duties as deemed necessary or desirable.

**41.05 Municipalities included and effective dates.**

(1) Any municipality, except a city of the 1st class, a county having a population of 500,000 or more and the state, shall be included within and subject to the provisions of this fund by so electing, in accordance with this section. If the official notice of election to be included has been received by the board on or before November 15 the effective date of participation of such municipality shall be the ensuing January 1; otherwise the effective date shall be the January 1 after the ensuing January 1. The state is hereby included, effective January 1, 1948. A city or village which has not elected to partici-

pate but some of whose employees will be included within and subject to this fund on or after January 1, 1948 shall be included within and subject to this fund effective January 1, 1948, as though such municipality had elected to participate herein, but until such municipality does actually so elect and such election becomes effective, its employees included within and subject to this fund shall be only those specified by ss. 61.65 (6) and (7), 62.13 (9) (e), (9a), (10) (f) and (g).

(2) Whenever any school district is created, the territory of which includes more than one-half of the last assessed valuation of either a school district which was a participating municipality at the time of such creation or a city which at the time of such creation was a participating municipality and which operated a city school district, the school district so created shall automatically be a participating municipality from its inception, but no prior service credits shall be provided for any personnel thereof.

(3) Any county which may elect to be included within the provisions of this fund may in the resolution and in the certified notice of election submitted under sub. (5) if received by the fund prior to January 1, 1961, determine that the municipality contribution rate for such county for the first year of participation shall not include the component for prior service cost, and the municipality contribution rate for the 2nd year of participation for such county shall include one-half the component for prior service. The deficiencies for such county for these 2 years shall be financed over the balance of the 40-year period under s. 41.10 (2) (a).

(4) Notwithstanding any other provision of this subchapter, if the effective date of participation of a city of the 4th class is January 1, 1967, all employes of a city school district not included under the state teachers retirement system, and of a municipal hospital in any such city shall be included within, and shall be subject to, the provisions of this fund effective January 1, 1968, and no interest or charges shall be assessed against any such city under s. 41.19 (2) or 41.21 with respect to the earnings of such employes for any period of service prior to January 1, 1968.

(5) Election by a municipality to be included within the provisions of this fund shall be made by a resolution adopted by a majority of all the members of the governing body. The governing body of any municipality so electing shall immediately submit a certified notice of such election to the board. Such notice must:

- (a) Be in writing;
- (b) Indicate the date of such election;
- (d) Be officially certified by the clerk of the

municipality, or person having a comparable status if no person holds the title of clerk.

(6) If the effective date is prior to January 1, 1966, prior service credits shall be computed pursuant to s. 41.08 (1) (a) 1, provided that in the computation of such prior service credits:

(a) No credit shall be given for state service as a teacher for which the state made a state deposit under subch. I of ch. 42.

(n) Each supreme court justice and circuit judge who makes the election pursuant to s. 41.02 (12) (i) shall be given prior service credit as of January 1, 1952, in accordance with s. 41.08 (1) (a) 1 for service prior thereto as supreme court justice, circuit judge or county judge, or as full-time judge of a court of record, municipal or inferior, at the rate of 2 times the municipality credit for current service. Prior service credit for service as county judge, or as full-time judge of a court of record, municipal or inferior, shall be based only upon his salary as such judge (excluding fees and salary as juvenile judge) computed on the basis of the earnings for the last 3 years of service as such judge (or less if the total be less), and such prior service credit shall be reduced by an amount equal to the accumulated prior service credit theretofore granted to such participating employe for service as such judge and by an amount equal to the accumulation of all normal and municipality matching credits for service as such judge, including interest which has been credited.

(r) Any elected state officer who was elected prior to August 30, 1957, but who was not eligible to be included under the fund before said date, and who, after such date and having served in such elective office continuously therefrom, files with the fund an election under s. 41.02 (12) (i) and within 60 days thereafter makes all normal contributions from January 1, 1957, to the first day of the month following the date of filing such election, shall be credited with prior service credits as of January 1, 1957, for eligible state service prior thereto at the rate of 2 times the municipality credit for current service and with municipality credits from January 1, 1957, to the first day of the month following the date of filing of such election.

(s) Each person who was a county judge on January 1, 1962, in a county which became a participating municipality on January 1, 1962, is entitled to prior service credits for all prior qualifying service for such county not heretofore credited. Such prior service credit shall be computed upon the basis of the earnings for the last 3 years of such service (or less if the total is less) and included in the obligation of the county.

(t) Each participant who was a participating employe of the state on January 1, 1966, shall be



given creditable service, as of such date, for all service as a member of the legislature and all service as a state constitutional officer elected by vote of the people, which has not previously been credited under any other provision of law. The amendment of this paragraph by chapter 581, laws of 1965 shall not affect any rights created or action taken pursuant to this paragraph prior to July 8, 1966.

(7) If the effective date is after December 31, 1965, creditable prior service shall be computed pursuant to s. 41.09.

(8) *[(a) and (b) not printed, 1957 c. 60, s. 35; see 1955 Stats., s. 66.902 (5); (c), (d) and (e) repealed; 1957 c. 60, s. 13, but rights created or action taken prior to repeal preserved.]*

(9) (a) 1. Notwithstanding this section every county having a population of less than 500,000 which has not hitherto elected to become a participating municipality shall on January 1, 1962, be a participating municipality. Each such county may elect to provide prior service credits at rates equal to 2, 1 1/2 or one times the rates of county credits for current service. If any county fails to certify to the director of the fund the prior service credit rate which it has elected on or before January 1, 1962, the applicable rate for such county shall be 2 times the rate of county credits for current service.

2. The sheriff of any such county shall, if he elects prior to January 1, 1964, to be included within the fund pursuant to s. 41.02 (12) (i), be credited with prior service credits, as of the date he becomes a participating employe, equal to the amount of prior service credits he would have received had he become a participating employe on January 1, 1962.

(b) 1. If the municipality contributions paid by any county as a participating municipality under the Wisconsin retirement fund shall in any calendar year exceed by more than 50% the average mill tax levy imposed in such year by all counties under said fund for contributions to said fund the state shall reimburse that county for the cost in excess of such 150%.

2. In determining the average county mill tax levy for any calendar year for said fund the director of the fund shall base such computation upon a certification by the department of revenue as to the total equalized valuation for general property taxes in each county under said fund collected in the calendar year for which municipality contributions are paid. Such average county mill tax levy shall be computed by comparing the aggregate municipality contributions for such year to the aggregate equalized valuation of such counties as above indicated and the rate for retirement purposes for each county shall be determined by dividing its mu-

nicipality contribution by the equalized valuation for general property taxes of such county.

3. The director of said fund shall annually certify to the department of revenue for payment to the counties out of the appropriation provided by s. 20.855 (2) (a) such amounts as each county is entitled to receive pursuant to this subsection for excess costs incurred for said fund contributions in the preceding calendar year, but no county shall be entitled to reimbursement for any calendar year prior to 1962.

4. Payments made by any participating municipality pursuant to s. 41.07 (2) (c) shall not be considered municipality contributions.

(c) Any such county which has elected to grant prior service credit to its employes on the one or 1 1/2 basis may, within 10 years after the effective date for such municipality, elect to change the basis upon which the prior service credit of all persons who are then participating employes shall be computed to be the 1 1/2 or 2 basis. Any such election shall be made by the county by using the appropriate part of the procedure which such county would then use if it were originally electing the basis upon which to grant prior service credit to its employes. When any such election to change the basis for computing prior service credits has become effective in any county, the governing body thereof shall certify such fact to the Wisconsin retirement fund which shall, as of the effective date for such county, recompute the prior service credit which had been granted to any person who has never been an annuitant and who is a participating employe of such county at the time such election becomes effective.

**41.07 Employes included; effective dates; contributions by employes, municipalities, state.** (1) EMPLOYES INCLUDED AND EFFECTIVE DATES. (a) All persons subject to this subchapter shall be included within, and shall be subject to, the provisions of this fund, beginning upon the dates hereinafter specified:

1. All such persons who are employes of any municipality on the effective date of participation of such municipality as provided in s. 41.05, beginning upon such effective date.

2. All such persons who become employes of any participating municipality after the effective date of participation of such municipality as provided in s. 41.05, beginning upon the first day of the calendar month following the date on which any such person has met all of the other qualifications for becoming a participating employe, but beginning immediately for any former participating employe who is otherwise eligible.

4. All members of the state employes' retirement system who shall be on a leave of absence

from the state service on January 1, 1948 or who shall be contributing to said system on December 31, 1947, except those who will be retired under said system effective January 1, 1948, pursuant to s. 42.71 (1) (c) [Stats. 1947] shall become participating employes hereunder effective January 1, 1948 and shall be governed by this subchapter.

5. The effective date for supreme court justices and circuit judges shall be January 1, 1952. Each supreme court justice and circuit judge who files his official oath on or after August 17, 1957 shall be included within the fund and be subject to this subchapter, notwithstanding s. 41.02 (12) (i).

6. In all counties under 500,000, every county judge whose official oath is filed on or after January 1, 1954 and every other full-time judge of a court of record, municipal or inferior, whose official oath is filed on or after January 1, 1956, shall be included within the fund and be subject to this subchapter notwithstanding s. 41.02 (12) (i) except that in computing his normal contributions, all fees and all salary as juvenile judge shall be disregarded and no prior service credit shall be granted because of such inclusion.

(b) Every leave of absence granted by a participating municipality to a participating employe except a military leave shall automatically terminate at the end of 2 years for the purposes of this fund, except for the purposes of s. 41.09 (2), if not previously terminated by the participating municipality. No leave of absence shall be deemed to have been ended or interrupted by reason of resumption of active duty until the participating employe has resumed active performance of duty for the participating municipality which granted such leave of absence for at least 18 working days within a period of 30 consecutive calendar days.

(c) Any person who has met all of the requirements of s. 41.02 (6), other than par. (c) thereof, shall be included under the fund but shall not make any contributions thereto or be eligible for any benefits thereunder until he becomes a participating employe.

(d) Effective on January 1, 1969 [1970], employes of the Minnesota-Wisconsin boundary area commission are state employes for purposes of subchs. II and VI of ch. 40 and subch. I of ch. 41, providing such employes, as a result of any agreement approved under s. 14.82, are not eligible to receive similar benefits from any other state covering the same period.

(2) CONTRIBUTIONS BY EMPLOYEES, MUNICIPALITIES, STATE. Each participating employe shall make contributions to the fund as follows:

(a) Effective for participating earnings paid on or after January 1, 1966:

1. For each employe not otherwise specified, 4 1/2% of such earnings which are subject to contributions under the federal OASDHI system, plus 7% of such earnings in excess of the amount subject to such contributions.

2. For each participating employe who performs services in connection with an activity carried on cooperatively by the federal government and a participating municipality, which services have been determined not to be subject to the federal OASDHI system, the amount which would be contributed under subd. 1 if such services were subject to the federal OASDHI system.

3. For each supreme court justice, circuit judge, county judge, member of the state legislature and state constitutional officer, 5% of such earnings which are subject to contributions under the federal OASDHI system, plus 7% of such earnings in excess of the amount subject to such contributions.

4. For each protective occupation participant covered by the federal OASDHI system, 5 1/2% of such earnings which are subject to contributions under the federal OASDHI system, plus 8% of such earnings in excess of the amount subject to such contributions.

5. For each other protective occupation participant, 7 1/2% of such earnings which would be subject to contributions under the federal OASDHI system if such participant was included in the federal OASDHI system, plus 8% of such earnings in excess of the amount which would be so subject to such contributions.

6. No participating employe shall make normal contributions with respect to such earnings for service in any period subsequent to the end of the calendar quarter year in which he attains the age of 63 years if he is a protective occupation employe, or the age of 70 years otherwise, and there shall be no municipality contribution for the service for which such earnings were paid. Effective for participating earnings paid on or after July 1, 1974, no protective occupation participant shall make normal contributions with respect to such earnings for service in any period subsequent to the end of the calendar quarter year in which he attains the age of 58 years, and there shall be no municipality contribution for the service for which such earnings were paid.

7. Additional contributions of such amount from any payment of earnings as are received for any employe, but not to exceed \$2,000 in any calendar year. Each such amount shall be in even multiples of \$1.

(b) Except as provided in par. (c) or (d) all normal contributions and all additional contributions shall be deducted from each corresponding payment of earnings paid to each participating employe and shall be due and be deposited in the office of the board by the employing municipality not later than the end of the month in which the earnings are paid. The deductions from earnings of participating employes of the state of Wisconsin and the duplicate monthly report of earnings required by the fund shall be due and be deposited in the office of the board by the respective departments, boards or commissions in which such employes are employed not later than the end of the month in which the earnings are paid.

(c) For participating employes other than state employes, in lieu of the contributions required by par. (a), all or part of such contributions may be paid by the employing municipality, but all such payments of contributions shall be reported to the fund in the same manner as though deducted from the earnings of participating employes and shall be treated as though contributed by participating employes, and all such payments of contributions made by the employing municipality shall be available for all retirement fund benefit purposes to the same extent as normal contributions which were deducted from the earnings of such participating employes. Action by any participating municipality to assume employe contributions as provided herein shall be by resolution, adopted by a majority of all the members of the governing body of such participating municipality, and shall be effective on the January 1 following receipt of a certified copy of such resolution by the fund.

(d) Effective for earnings received after June 30, 1967, by each participating employe of the state, an amount equal to 2% of each payment of earnings shall be paid by the state, in lieu of an equal amount of the contributions required to be made by par. (a). The amount to be paid by the state under this paragraph shall be increased on July 1, 1969, to 2 1/2%, on January 1, 1970, to 3%, and on July 1, 1970, to 4% of each payment of earnings. Such payments by the state shall be credited to the account of each participating employe and shall be available for all retirement fund benefit purposes to the same extent as normal contributions which were deducted from the earnings of such participating employes, except that the amount of any separation benefit payable under s. 41.16 from the fixed annuity division shall be reduced by an amount equal to 2% of the annual earnings received by a participant from the state after June 30, 1967, together with interest thereon accumulated at

the effective rate from year to year. For purposes of computing retirement fund contributions, retirement fund benefits and maintaining accounts, all earnings of state employes earned, but not paid, prior to July 1, 1967, shall be deemed to have been paid prior to July 1, 1967.

Note: Sub. (2) (d) is printed as amended by Chaps. 154, sections 186m and 378, 158 and 245, section 11, laws of 1969. See sections 14 and 16 of Chap. 245, laws of 1969.

(3) COUNTY JUDGES AND COURT REPORTERS UNDER STATE RETIREMENT PLAN. County judges and county court reporters, except in counties having a population of 500,000 or more, shall be included under retirement, group insurance and social security pursuant to subch. I of ch. 41 and subchs. II and VI of ch. 40, respectively, for salaries paid pursuant to s. 20.923 (1) (a) upon the same basis as state officers and employes, with the employer cost thereunder being paid by the state.

**41.08 Credits to employes; credits for service men.** (1) CREDITS TO EMPLOYEES. (a) For the purpose of determining the amount of any annuity or benefit to which an employe or beneficiary shall be entitled, each participating employe shall be credited with the following amounts, as of the dates specified:

1. For prior service, each participating employe who is an employe of a participating municipality on the effective date provided such date is prior to January 1, 1966, shall be credited, as of such date, with a prior service credit of an amount equal to 2 times the accumulated value, as of such date, of the contributions which would have been made during the entire period of prior service of such employe, assuming the earnings of such employe to have been uniform during such period of prior service and equal to the monthly earnings obtained by dividing the total earnings during the period of the 3 calendar years immediately preceding the effective date, by the number of months in such period for which any earnings were received by such employe; the rate of contribution to have been 3% except that for policemen, including the chief and all other officers, county undersheriffs, deputy sheriffs and traffic policemen, the rate shall be 5%, and for firemen, including the chief and other officers, the rate shall be 7% unless on the effective date such employment is included under the federal old age, survivors, and disability insurance system in which event the rate shall be 5%; the contributions for each calendar year to have been made at the end of such year; and the contributions to have accumulated with interest at the rate of 3% per annum compounded annually.

2. For current service, each participating em-

ploye shall be credited with the following amounts as of the dates specified:

a. Additional credits of amounts equal to each payment of additional contributions received from such employe, as of the date the corresponding payment of earnings is payable to the employe;

b. Normal credits of amounts equal to each payment of normal contributions received from such employe, as of the date the corresponding payment of earnings is payable to the employe;

c. Municipality credits of amounts equal to each normal credit of each employe, as of the date of each corresponding normal credit in respect to earnings payable to the employe prior to January 1, 1966.

3. Upon termination of an annuity in accordance with s. 41.11 (12) (a) or 41.13 (2) (e), each participant whose annuity is so terminated shall be credited, as of the date such annuity is terminated, with additional, normal, municipality and prior service credits of amounts equal to the then present value of the portion of the terminated annuity which was originally provided by the corresponding type of credit. Upon receipt by the fund of reimbursement under s. 41.13 (4) of disability annuity payments paid to any participant, such participant shall be credited, as of the date of such receipt, with additional, normal, municipality and prior service credits of the same amounts as were accumulated in his accounts on the date of commencement of such annuity.

4. When any person who was a member of the state employes' retirement system on December 31, 1947, becomes a participating employe under the Wisconsin retirement fund, the board shall certify such fact to the investment board which shall forthwith certify to the Wisconsin retirement fund board the total sum to the credit of such person in said former system, including an equitable amount of interest from July 1, 1947, which shall be determined by the investment board and by it credited to the respective accounts, indicating the amount attributable to regular contributions and interest, and the amount attributable to additional contributions and interest which Wisconsin retirement fund board shall thereupon credit the amount attributable to regular contributions and interest and the amount attributable to additional contributions and interest, as an additional credit to an account which shall be established forthwith for such participating employe in the Wisconsin retirement fund. The portion of such additional credit which is attributable to regular contributions and interest under the state employes' retirement system shall be treated as normal credits except that no corresponding municipal-

ity credit therefor shall be given pursuant to subd. 2. Whenever the investment board makes such a certification, it shall forthwith transfer, by cash payment or sale or assignment of securities from the state employes' retirement fund to the Wisconsin retirement fund, assets equal in value to the total of the amounts so certified. The investment board may make a correctional or supplementary certification and corresponding transfer of assets at any time.

6. Notwithstanding any other provisions of this section, any participating municipality may grant prior service credits to its employes included under the fund for periods of employment by another municipality from whose area or any part thereof the participating municipality was created; and any participating municipality may grant prior service credits to its employes included under the fund for periods of employment by another municipality all or part of whose area is included within such participating municipality. When a participating municipality desires to grant any such prior service, the governing body of the participating municipality shall certify to the fund all such periods of service and the earnings received by the employe which are needed to compute the prior service credits of said employe as though the employe had been in the service of the participating municipality during all of said periods of service.

7. Notwithstanding any other provision of this section, any participating municipality other than the state may grant prior service credits to any participant who has been employed by such participating municipality for not less than 15 years (whether before or after the effective date for such participating municipality) but who, as a result of action by the governing body of such participating municipality, was not an employe of such participating municipality on the effective date, provided that such participant returned to the employment of such participating municipality within 3 years following such effective date. When a participating municipality desires to grant any such prior service credits the governing body of the participating municipality shall so certify to the fund and shall furnish all information necessary to make a determination of the amount of such credits.

8. The prior service credits of every participating employe of each municipality on January 1, 1960, shall be redetermined where necessary to include in his total earnings during the 3 calendar years immediately preceding the effective date under subd. 1 all earnings in excess of \$4,200 per year as an employe of that participating municipality, as of the effective date of participation of that participating municipality. Any increase in the prior service credits of the

employe of a municipality under this subdivision shall be added to its obligation under s. 41.19 (1) (a).

9. The prior service credits of every participating employe of each municipality on January 1, 1960, shall be redetermined as of such date where necessary to include credit for each year of his service for that participating municipality subsequent to its effective date of participation, and prior to January 1, 1958, in an amount equal to the product of the normal contribution rate for such participating employe for such year multiplied by the amount of the earnings paid to him in such year, but not considered as participating earnings due to a limitation then in effect under s. 41.02 (18) on the monthly or annual amount of earnings, without interest. Any increase in the prior service credits of the employes of a municipality under this subdivision shall be added to its obligation under s. 41.19 (1) (b) to be paid under s. 41.10 (2) (b).

13. Any participating municipality may provide by resolution that the recomputation of credits pursuant to subds. 8 and 9 shall also be applicable to credits for periods of employment by another municipality if the area or any part thereof is included within the limits of that participating municipality, to the extent that such employment has been included under the Wisconsin retirement fund. The participating municipality shall file a certified copy of such resolution with the fund promptly, and also certify to the fund the names of the persons affected and the identity of the former participating municipality by which such persons were previously employed.

14. Each person who is a county court reporter on the first Monday in January, 1962 and who on December 31, 1961, occupied a county position qualifying under s. 41.02 (6) but who was not a participating employe shall as of January 1, 1962, receive prior service credit for all service for such county subject to s. 41.02 (6), as an obligation of the state.

15. Any state participating employe who has not received prior service credit, who had at least 15 continuous years of eligible state service prior to January 1, 1950, and who has been a participating employe continuously for 5 years or more between January 1, 1950, and January 1, 1961, shall receive prior service credit as of January 1, 1950, for all eligible state service prior thereto. Such prior service credits shall be granted only if any such employe within 60 days of January 14, 1966 contributes to the fund as a normal contribution any amounts previously withdrawn from the former state employes' retirement system, together with interest compounded annually at the effective rate of interest

from January 1, 1950, to the date of such contribution, and the amount of prior service credited as provided herein shall be reduced by the total amount of such contributions and interest. No interest income shall be credited to any prior service credits granted under this subdivision for any period prior to 1966.

(b) The credits of each individual participant shall be accumulated in a separate account for each type of credit, and interest shall be credited thereon as follows:

1. All balances at the beginning of each year remaining in such accounts at the end of the year shall be improved with interest, at the end of each year, at the effective rate of interest for the year.

2. All amounts credited to participants during the year in accordance with par. (a) 3 remaining in such accounts at the end of the year shall be improved with interest at the end of such year for each full month elapsing between the date of credit and the end of the year, at one-twelfth of the effective rate of interest for the year.

3. All balances at the beginning of any year, and all amounts credited to participants during the year in accordance with par. (a) 3, not remaining in such accounts at the end of the year because of the granting of annuities or death benefits during the year, shall be improved with interest, on the first day of the month in which the first annuity or death benefit payment is due, for each full month elapsing between the first day of the year or the date of credit, as the case may be, and the first day of the month in which such first annuity or death benefit payment is due, at one-twelfth of the effective rate of interest for the preceding year.

4. Upon the granting of a retirement annuity, a disability annuity, a death benefit or a separation benefit, all of the accumulated credits and the creditable service of such participant shall thereupon be terminated and no further right to such credits shall exist other than the right to such annuity or benefit so granted except as provided by s. 41.14 (2) (c), (d) and (e).

5. As of December 31, 1965, credits granted pursuant to s. 66.904 (1) (a) 2. d [Stats. 1963] shall be deleted from the account of each participant, but such deletion shall not destroy any benefit right arising from such credits for annuitants or persons with annuity applications pending on such date.

(d) In computing the prior service credit of a person who was an employe on the effective date there shall be included all previous service for such municipality, including service as an elective or appointive official or as an employe, if such service or employment conformed to the requirements of s. 41.02 (6).

(e) As of December 31, 1965, the accounts in the fixed annuity division and the variable annuity division of each participant whose accounts include accumulated additional credits attributable to regular contributions and interest under the former state employes retirement fund shall be adjusted by such transfers within such accounts as are required to include in his accumulated normal credits the amount of such accumulated additional credits not in excess of the amount of his accumulated prior service credits and to include the remainder of any of such accumulated additional credits in his additional credits within the meaning of s. 41.07 (2) (a) 7; and to decrease his accumulated prior service credits and increase his accumulated municipality credits by the amount so included in his accumulated normal credits. Transfers of credits within the accounts of any participant as provided herein shall not affect the total amount of his accumulated credits in the fixed annuity division or in the variable annuity division, the total amount of his accumulated credits attributable to his own contributions, or the total amount of his accumulated prior service and municipality credits.

(2) **PRIOR SERVICE CREDITS FOR SERVICE MEN.** (a) Prior service credits pursuant to sub. (1) (a) 1 shall be granted for periods of service in the armed forces of the United States during World War II, which shall include such service subsequent to September 16, 1940, to any person who was an employe on the effective date of participation by such municipality and who left the service of such municipality to enter such armed forces. Such credit shall be granted as of the date the employe resumes or resumed employment with the municipality pursuant to s. 16.276 or 45.50 prior to January 1, 1948. Credit shall also be granted for service during World War I to any person who was employed by the municipality at the time of his entrance into the armed forces of the United States, if such employment was resumed within 90 days after discharge from the armed forces and continued until the effective date of participation of the municipality with total interruptions thereafter of not to exceed 2 years.

(b) In each such case the earnings computed under sub. (1) (a) 1 shall be adjusted to reflect any salary increase or salary adjustment which would have altered the rate of earnings during the period of the 3 calendar years immediately preceding the effective date if such employment had not been interrupted by service in the armed forces. Whenever because of service in the armed forces an employe shall have no earnings as computed under sub. (1) (a) 1, then the rate of earnings shall be computed by dividing the

earnings during the last 12 calendar months of municipal employment by 12, and such rate of earnings shall be adjusted as provided in this paragraph.

(c) This subsection shall be effective, as to any municipality now or hereafter included in this fund, as of the date of participation of each such municipality.

(3) **CURRENT SERVICE CREDITS FOR SERVICE MEN.** (a) Current service credit shall be granted for that period of service spent in the armed forces of the United States, between the effective date of participation by the employing municipality and the date when the employe resumed employment with the municipality pursuant to s. 16.276 or 45.50, such credit to be given as of such latter date, but such credit shall be granted only to a person who was an employe on the effective date of participation by such municipality, who left the service of such municipality to enter such armed forces and who entered such armed forces prior to January 1, 1948.

(b) The participating municipality shall grant such current service credit by making for such participating employe the municipality contributions which it would have made for such employe had he continued in the service of such municipality during such period. In each such case the assumed earnings of such employe, upon which such municipality contributions must be based, shall be computed in the manner provided for computing earnings under sub. (2) (b).

(bb) Current service credit shall be granted for that period of service spent in the armed forces of the United States between the beginning of such service or June 25, 1950, whichever is later, and the date when the employe completes such service, if the employe resumes employment with the participating municipality in conformity with s. 45.50 (1), but such credit shall be granted only to a person who left the service of the participating municipality to enter such armed forces. Such credit shall be granted pursuant to par. (b) as of the date the employment is resumed.

(c) This subsection shall be effective, as to any municipality now or hereafter included in this fund, as of the date of participation of each such municipality.

**41.09 Creditable service.** (1) The creditable service of each participant at any time prior to January 1, 1966, shall be the sum of his periods of prior service and current service as a participating employe as determined pursuant to the applicable statutes and rules. The period of creditable service of a participant after 1965

shall be the number of years and completed months of service for which he receives earnings until his employment is terminated, but not including any period subsequent to the end of the calendar quarter year in which he attains the age of 63 years if he is a protective occupation employe, or the age of 70 years otherwise. The board shall fix and determine by proper rules how much service in any year is equivalent to one year of creditable service. Effective July 1, 1974, no protective occupation participant shall receive creditable service for any period after June 30, 1974, which is subsequent to the end of the calendar quarter year in which such participant attains the age of 58 years.

(2) A participant shall be considered as a separate participant with respect to each separate period of current service for each participating municipality but the current service of a participant shall not be considered to have been interrupted by reason of any change of employers arising solely from the operation of s. 41.05 (2) or 41.10 (6) if both the predecessor and the successor municipality were participating municipalities on the date of such change. A separate period of current service shall be deemed to commence on the date a former participating employe of a municipality again becomes a participating employe of such municipality more than 2 years after the last date for which he was entitled to earnings as a participating employe thereof, but not if such resumption of employment occurs at or prior to the expiration of an authorized leave of absence or prior to September 12, 1965. The commencement of a separate period of current service shall not cause the loss of any benefit to which a participant is entitled by virtue of any preceding service with any municipality, nor shall it subject him again to the requirements of s. 41.02 (6) (c).

(3) Current service credit for military service after December 31, 1965, shall be granted on the basis of creditable service equal to one-half the period of service in the armed forces of the United States between the beginning of such service and the date of completion of such service if the employe left the service of a participating municipality to enter such armed forces and resumes employment with such municipality in conformity with s. 45.50 (1).

(4) Notwithstanding any other provision of this section, any participating municipality may provide by resolution for the inclusion in the creditable prior service of its participating employes' periods of employment by another municipality from whose area or any part thereof the participating municipality was created, or by another municipality all or part of whose area is included within such participating municipality.

In such event, the governing body of the participating municipality shall certify to the fund all periods of service and the earnings received by the employe which are needed to compute the creditable service of said employe as though accrued as an employe of the participating municipality.

(5) The computation of the creditable prior service of a person who was an employe on the effective date shall include all previous service for such municipality, including service as an elective or appointive official or as an employe, if such service or employment conformed to the requirements of s. 41.02 (6); but after December 31, 1965, in no case shall creditable prior service include any service rendered after the end of the calendar quarter year in which a participant attains the age of 63 years if he is a protective occupation participant or the age of 70 years otherwise; but after June 30, 1974, in no case shall creditable prior service include any service rendered after the end of the calendar quarter year in which a protective occupation participant attains the age of 58 years.

(6) Any participating municipality other than the state may provide by resolution, adopted by a majority of the members of the governing body thereof, that each employe of such municipality who is a participating employe of such participating municipality on January 27, 1968, shall be granted, as of the date payment is made as required herein, creditable service for all service for such participating municipality which was not credited previously because payment for such service was in the form of fees; but within 90 days following January 27, 1968, each participating employe who is granted creditable service pursuant to this subsection shall pay to the fund as normal contributions an amount equal to the total normal contributions which they would have made if the fees such employes received during such periods of creditable service had been considered earnings.

(7) Each employe of the state who is a participating employe on July 1, 1968, shall be granted as of such date creditable service for all service as a member of the legislature which has not been credited under any other provision of law if, prior to such date, the member makes all required contributions which he would have made as a participating employe during such service after January 1, 1957, and prior to the first day of the month in which he became a participating employe.

**41.10 Contributions by municipalities. (1)** Except as provided in sub. (8), each participating municipality shall make contributions to the fund as follows:

(a) Municipality contributions of the percentages, as specified in this section, of each payment of earnings made to each participating employe. Such contributions shall be made by the state from the respective funds from which the salaries are paid to the employe for whom such contributions are being made; the heads of the respective state departments and agencies which make the salary deductions in accordance with s. 41.07 (2) (b) shall, at the time that said salary deductions are sent to the board, by applying the municipality contribution rate of the state to the appropriate portion of the earnings of the respective employes of that department or agency, determine the amount of the corresponding municipality contribution to be made by the proper fund of the state and shall indicate the amount of such contribution on the monthly payroll report submitted in duplicate to the fund. The fund shall transmit one copy of such monthly payroll report to the department of administration together with a voucher for payment to the Wisconsin retirement fund, from the appropriate state funds, of the amounts payable thereto as indicated by the copy of the payroll reports so submitted. Thereupon the department of administration shall promptly approve such voucher for payment and the state treasurer shall forthwith issue his check therefor to the Wisconsin retirement fund.

(b) Advance contributions of such amounts as are determined by any participating municipality for the purpose of reducing any existing obligation of such municipality.

(2) Each such percentage shall be the rate computed as necessary to provide, as of the beginning of such year, the total of the following:

(a) The uniform annual amount required, after allowance for anticipated employe separations, at the prescribed rate of interest:

1. To amortize, over the remainder of the period of 40 years following the effective date, the amount of the obligation as of December 31, 1965, for prior service credits granted to the employes of the municipality; and

2. To amortize over the remainder of the period of 40 years following December 31, 1965, or the effective date, if later, the amount by which the then present value of all future benefits of the then participants of the municipality other than benefits financed by employe contributions and benefits financed pursuant to par. (c) exceeds the sum of the then present values of:

a. All future contributions pursuant to subd. 1;

b. All future contributions by the municipality with respect to such participants pursuant to par. (b); and

c. The then balance of the municipality's accumulation account.

(b) The uniform percentage of the earnings of each participating employe which if contributed throughout the period of his creditable service would have the same present value as of the date of its commencement as the amount of his retirement annuity not provided by his own contributions.

(c) The amount of the one-year term premium required to provide the excess, if any, of the present value of the disability benefits expected to be granted during such year to the employes of such municipality, over the present value of the annuities to which such employes would be entitled under s. 41.11 in the absence of the minimum age and amount requirements thereof, adjusted for any surplus or deficiency pursuant to s. 41.20 (1) (b).

(d) The amount of the one-year term premium required to provide the excess, if any, of the present value of the special disability benefits under s. 41.13 (3) expected to be granted during such year to the employes of such municipality, over the available accumulated credits of such employes.

(3) (a) Each contribution rate computed under sub. (2) shall be based on the information available at the time such computation is made and on such assumptions as the actuary recommends and the board approves from time to time.

(b) Such rates shall become effective, after certification by the board, as of the beginning of the calendar year to which they are applicable and shall remain in effect during such year, except that the director upon the written recommendation of the actuary may change any such rate during any calendar year for the purpose of reflecting in such rate any reduced obligation which results from any payment of advance contributions.

(c) The contribution rate for the state shall be computed so as to permit a determination of the rates which would be applicable if separate rates were to be applied to each of the employment categories set forth in s. 41.11 (6) (c) 3, based on the actual cost of the retirement program for each such category of state participants.

(d) A separate state contribution rate shall be applied as provided in this section to the earnings of all state protective occupation participants, and a separate state contribution shall be applied as provided in this section to the earnings of all other state participants.

(4) The amount of each municipality contribution shall be determined by applying the proper percentage rate of contribution to the total of all earnings paid to employes of the mu-



municipality on each pay day, and all such amounts shall be due and be deposited in the office of the board by the municipality not later than the end of the month in which the earnings are paid.

(5) Notwithstanding any other provisions of this section, each participating municipality which has no participating employees as of the beginning of the year shall make contributions to the fund 4 times during the year, in addition to any contribution under sub. (1) (b). Such contributions shall be due and be deposited in the office of the fund by the municipality not later than February 15, May 15, August 15 and November 15 of the year. The amount of each such municipality contribution shall be one-fourth of the amount required for the year under sub. (2) (a) and (b) assuming that the municipality will have no participating employees during the year.

(6) Whenever the existence of any participating municipality is terminated because of consolidation or for any other reason, the municipality which thereafter includes the area of such terminated municipality shall be liable for all contributions payable to the fund by such municipality. If the territory of such former participating municipality is attached to 2 or more municipalities, the total accumulation account of such former participating municipality shall be allocated to such municipalities in proportion to the equalized valuation of each area so attached. The amount of such allocations to the respective municipalities shall be certified by the board of trustees of the fund to the clerk of each such municipality. If the municipality to which the territory is so added is or becomes a participating municipality the allocation so certified to its clerk shall be added to its accumulation account. If the municipality to which any part of the former municipality is added is not a participating municipality the contribution required to liquidate the allocated accumulation account shall be made by the successor municipality as an annual payment not later than May 1 in each year following a certification which shall be made by the board in conformity with sub. (2) (a). Whenever such obligation is discharged pursuant to law, the board shall refund any overpayment.

(8) Notwithstanding any other provision, the cost of all prior service credits and municipality current service credits granted on and after January 1, 1954, to county judges and on and after January 1, 1956, to full-time judges of courts of record, municipal or inferior (other than a county court) for such service shall be paid by the state. Effective January 1, 1962, the state shall make municipality current service contributions only on salaries of judges and reporters who are paid pursuant to ss. 253.07 (1) and

253.35 (3) in counties of less than 500,000 population.

#### 41.11 Compulsory retirement; annuities.

(1) **COMPULSORY RETIREMENT.** (a) Any participating employee, except an appointed state officer, who has reached his normal retirement date on the effective date shall be retired at the end of his first calendar quarter year as a participating employee and any participating employee who reaches his normal retirement date shall be retired at the end of the calendar quarter year in which such date occurs, unless written notice is received by the board certifying that the governing body of the municipality by which such employe is employed has specifically authorized such employe to continue in employment for a period not to exceed one year beyond such date, or not to exceed one year beyond the date of expiration of any previous certification date or until the end of the current term if chosen for a definite term, in which event such employe shall be retired at the expiration of the period designated in the last certification for such continuance on file with the board. The election by the voters of any member of a governing body of a participating municipality other than the state shall constitute the notice required pursuant to this paragraph authorizing such elected official to serve for the duration of the term for which he was elected. The employment of a participating employe who is an appointed state officer or a state employe who is the head of a state agency may be continued only upon receipt by the board of such a written notice from his appointing authority which shall act as the governing body under this subsection for the sole purpose of granting such continuances.

(b) Any election of a county officer by the voters shall constitute the notice required under par. (a) authorizing such elected county officer to serve for the duration of the term for which he was elected.

(2) **JUSTICES AND CIRCUIT JUDGES.** Each supreme court justice and circuit judge who attains age 70 shall be retired not later than the July 31 following the date on which he attains the age of 70. This subsection shall supersede the provisions of sub. (1) for supreme court justices and circuit judges.

(3) **COUNTY JUDGES.** Each county judge included under this fund shall cease to hold office and shall be retired on July 31 following the date on which he attains the age of 70 years. This provision shall supersede the provisions of sub. (1) for county judges.

(4) **ELECTIVE STATE OFFICERS.** Each state officer elected by the vote of the people, other than a justice of the supreme court or a judge,

who becomes a participating employe pursuant to s. 41.02 (12) (i) and who has attained age 65 when electing to participate shall be retired at the end of the then current term. Any such state officer who attains age 65 after electing to become a participating employe shall be retired on the date of the expiration of the term in which he attained age 65. In either case any subsequent election of such a state officer after age 65 by the voters shall constitute the notice required under sub. (1) (a) authorizing such elected state officer to serve for the duration of the term for which he was elected.

(5) **DE FACTO OFFICERS.** Any state officer, heretofore or hereafter appointed, who has passed age 65 on the date of appointment, who has been confirmed by the senate when required by law, and for whom no proper formal notice required under sub. (1) (a) has been filed is entitled to all salary and to benefits under this subchapter for the period for which he serves as a de facto officer just as though such formal notice or notices under sub. (1) (a) had been filed and notwithstanding that said state officer had terminated his employment prior to January 28, 1960.

(6) **RETIREMENT ANNUITIES.** (a) The following described persons shall be entitled to retirement annuities, beginning on the dates hereinafter specified:

1. Any participant who has attained age 55 and who, regardless of cause, is separated and continues to be separated until such annuity is initially approved pursuant to s. 41.04 (1) (b), from all service for every participating municipality for which he has been a participating employe prior to becoming an annuitant and for which such participating employe received compensation. Until the annuity is initially approved employment for any other participating municipality shall be limited to that for which the compensation would not be subject to normal contributions under any circumstance.

2. Such annuities shall begin on the date specified by the participant in the written application therefor, provided such date is not prior to the date of separation from the last participating municipality by which such participant was employed, and provided such date is not more than 60 days prior to the date of receipt of such application by the board; and provided the credits of the participant are sufficient as of such date to provide an annuity of at least \$10 beginning immediately; and provided the participant has attained the age of 55. No application shall be filed with the board unless the date therein specified on which an annuity is to begin is not later than 90 days after the date of receipt of such application by the board.

3. Whenever it is determined that an annuity was approved prematurely because the final termination of employment was subsequent to that originally reported, it shall not be necessary to cancel the annuity, but instead the beginning date of the annuity shall be corrected.

(b) The initial amount of any retirement annuity of a Group A participant who is not also a Group B participant shall be determined in accordance with the prescribed rate of interest and the approved actuarial tables in effect on the date of approval of such annuity by the board and shall be the sum of the following:

1. The annuity which can be provided, on the date such annuity begins, from the total accumulated additional and normal credits of the participant at such time, and

2. The annuity which can be provided on the date such annuity begins from the total accumulated municipality and prior service credits of the participant at such time but the amount of accumulated prior service credits so applied shall not exceed the amount which would result in an annuity provided by all credits other than additional credits equal to 60% of the final rate of earnings.

(c) The initial amount of retirement annuity of a Group B or Group C participant shall be the sum of the following:

1. The annuity which can be provided, on the date such annuity begins, from the accumulated additional credits of the participant at such time on the basis of the actuarial tables in effect on the date of approval of the annuity;

2. The annuity which can be provided, on the date such annuity begins, from a sum equal to 200% of the excess accruing after December 31, 1965, of a) his accumulated normal credits reserved for a variable annuity over b) the amount to which such credits would have accumulated if not so reserved, providing that if item a) is less than item b), the annuity shall be reduced by the amount which could be provided by a sum equal to 200% of the deficiency; and

3. An annuity computed on the basis of the earnings and creditable service of the participant, if the annuity begins on or after the normal retirement date of a participant (or, if the annuity begins prior to the normal retirement date of the participant the annuity which is the actuarial equivalent of such annuity deferred to the normal retirement date), determined by multiplying the number of years of his creditable service by the following amount:

a. For each participant for creditable service of a type not otherwise specified in this subdivision, six-sevenths of one per cent of his formula final rate of earnings plus three-sevenths of one

per cent of his final excess OASDHI earnings, if any;

b. For each participant for creditable service as a supreme court justice, circuit judge, county judge, member of the legislature or state constitutional officer elected by vote of the people,  $1\frac{1}{5}$  of one per cent of his formula final rate of earnings, plus three-fifths of one per cent of his final excess OASDHI earnings, if any;

c. For each participant subject to subch. VI of ch. 40 for creditable service as a protective occupation participant,  $1\frac{1}{3}$  of one per cent of his formula final rate of earnings, plus one-sixth of one per cent of his final excess OASDHI earnings, if any, but for any annuity approved by the board after June 30, 1969, such amount shall be  $1\frac{3}{5}$  of one per cent of his formula final rate of earnings, plus one-fifth of one per cent of his final excess OASDHI earnings, if any;

d. For each participant not subject to subch. VI of ch. 40 for creditable service as a protective occupation participant,  $1\frac{3}{4}$  of one per cent of his formula final rate of earnings, less one-fourth of one per cent of his final excess OASDHI earnings, if any, but for any annuity approved by the board after June 30, 1969, such amount shall be  $2\frac{1}{10}$  of one per cent of his formula final rate of earnings, less three-tenths of one per cent of his final excess OASDHI earnings, if any.

4. The initial amount of any annuity determined under subd. 3 in the normal form shall not exceed the amount which, when added to the primary or disability insurance benefit for which he is eligible or for which he will be eligible upon attaining the lowest age at which old-age benefits are payable under the OASDHI program, equals 75% of the participant's formula final rate of earnings. If a participant does not receive such OASDHI amount by reason of his failure to apply therefor or by virtue of the suspension thereof, he will notwithstanding such fact be deemed to receive such amount. If a participant fails to establish the amount of, or his eligibility for, such OASDHI benefit, determination thereof shall be made by the board on such basis as the board, by rule, establishes.

(d) In no case shall the initial amount of the retirement annuity in the normal form of a Group B or Group C participant be less than the sum of the following:

1. An annuity determined pursuant to par. (c) 1;
2. The annuity which can be provided, on the date such annuity begins, from the accumulated normal credits of the participant at such time; and
3. One-half the amount determined pursuant to par. (c) 2 and 3.

(e) The initial amount of any retirement annuity of a Group B participant shall be the amount determined pursuant to par. (c), (d) or this paragraph, as the participant elects, provided that if the participant fails to make an election, the annuity shall be that sum calculated under said paragraphs which results in the largest annuity. The annuity under this paragraph shall be the annuity which can be provided by the sum of the following:

1. The accumulated additional and normal credits of the participant on the date such annuity begins;

2. The accumulated municipality credits and prior service credits of the participant at the date such annuity begins if prior to December 31, 1965, or otherwise the amount of such accumulated credits at December 31, 1965, compounded to the end of the last completed calendar month prior to the date such annuity begins at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year;

3. The amount equal to the accumulated normal credits of the participant attributable to his earnings paid after December 31, 1965, which would have resulted if his normal contribution rate was the rate applicable at December 31, 1965, to his position and if all such credits were accumulated in the fixed annuity division; and

4. If the annuity begins after December 31, 1965, and if the participant's accounts include credits reserved for a variable annuity, the amount equal to the excess if any of a) the accumulated normal credits and prior service credits of the participant on the date the annuity begins over b) the accumulation therefrom which would have resulted if such accumulated credits in the variable annuity division at December 31, 1965, had been transferred to, and all subsequent credits included in the fixed annuity division. If a) is less than b), the accumulated credits under either subd. 2 or 3 shall be reduced by the amount of such deficiency. For the purposes of this subdivision accumulated prior service credits shall be determined as if included in the accounts of the participant and not in the municipality accumulation account.

5. The amount attributable to prior service credits so applied under subds. 2 and 4 shall not exceed the amount which would result in an annuity, provided other than by accumulated additional credits, equal to 60% of the formula final rate of earnings.

(f) The normal or ordinary form of retirement annuity is a modified cash refund annuity which provides for a death benefit equal to the excess, if any, of the accumulation from the member's additional and normal credits at the commence-

ment of the annuity over the total amount of the annuity payments to date of death.

(g) Paragraphs (c), (d) and (e) shall be effective with respect to any retirement annuity provided therein if application therefor is filed after September 12, 1965 and if the beginning date of such annuity is after such date, but until January 1, 1966, each such annuity shall be determined and paid as provided by the law in effect prior to the creation of this subsection. As soon as possible after January 1, 1966, each such annuity shall be increased to the amount determined pursuant to par. (c), (d) or (e), subject to the same optional modification if any as was applied to the original annuity, and payment of such increased amount shall be made retroactively to the beginning date of each such annuity. Any such increased amount shall be included, as provided herein, as a part of any related death benefit or beneficiary annuity arising from the death of a participant.

(m) Notwithstanding par. (a) 1, whenever a participating employe is subject to compulsory retirement in the absence of action pursuant to sub. (1) (a) permitting continuance such person shall not be barred from applying for a retirement annuity based upon service which has terminated.

#### (7) ALTERNATIVE RETIREMENT ANNUITIES.

(a) Notwithstanding any other provision of this subchapter, any participant who is eligible to receive an ordinary retirement annuity under sub. (6) may elect, in lieu of such annuity, to take the actuarial equivalent thereof as a retirement annuity payable monthly for the life of the participant as the annuitant, with a guaranty of 180 monthly payments, and in the event of his death before 180 monthly payments have been made, the remainder of the 180 monthly payments shall be continued to one beneficiary or divided as specified by the participant, and equally if not specified, between 2 or more beneficiaries designated by such participant, until payments shall have been made for 180 consecutive months after such annuity began.

(b) Upon the death of the annuitant who was the participating employe before payment has been made for 180 months, the then present value of the remainder of such payments shall be paid as a death benefit under s. 41.14 to the estate of such annuitant where such estate was designated as the beneficiary or where no beneficiary was designated or where no designated beneficiary survives.

(d) Upon the death of any designated beneficiary after he has become entitled to receive monthly payments hereunder, the then present value of the remainder of his benefit shall be paid as a death benefit under s. 41.14.

(f) A justice of the supreme court, a circuit judge or a county judge who is eligible to receive an ordinary retirement annuity under sub. (6) may elect, in lieu of such annuity, to take the actuarial equivalent thereof as a retirement annuity payable monthly for the life of the participating employe as the annuitant, with a guaranty of 120 monthly payments, in which event all of the provisions of pars. (a) to (d) shall be applicable except that wherever the figure "180" appears in said paragraphs the figure "120" shall be substituted.

(g) If the amount of the monthly payments to a beneficiary of an annuitant under this subsection is less than \$10, such monthly payments shall not be paid, but in lieu thereof the then present value of such monthly payments shall be paid to such beneficiary upon the death of the annuitant. Any beneficiary entitled to receive monthly payments amounting to less than \$10 under a retirement or beneficiary annuity granted prior to October 1, 1957 may elect at any time to receive the then present value of the remainder of his benefit.

(8) OPTIONAL FORM OF ANNUITY. Notwithstanding any other provisions of this subchapter, any participant who is eligible to receive an ordinary retirement annuity under sub. (6) may elect, in lieu of such annuity, to take the actuarial equivalent thereof as an annuity payable monthly to the participant during life, and after the death of the participant, monthly payments of 75% of the monthly amounts payable to the participant, if living, to be continued to such one beneficiary during life as the participant shall have designated in his original application for an annuity.

(9) OPTIONAL INTEGRATED ANNUITY. Notwithstanding any other provision of this subchapter, any participant who is eligible to receive an ordinary retirement annuity under sub. (6), which annuity is to begin prior to the participant's 62nd birthday, may elect, in lieu of such annuity, to take the actuarial equivalent thereof as: a) a reduced annuity payable monthly for life, plus b) a temporary annuity payable monthly and terminating with the payment due in the month in which the participant attains age 62. It is the intent of this option that so far as is practicable the aforesaid life annuity and temporary annuity will be determined in such relative amounts that the participant's total anticipated retirement benefits from the fund and from primary social security will be the same both before and after attainment of age 62, assuming that the participant has no further wages credited to his account under the OASDHI system after ceasing to be a participating employe. Section 41.14 (2) (c) shall ap-

ply to an annuity granted under this subsection.

(10) **OTHER FORMS OF ANNUITIES.** In addition to the optional forms of annuities permitted under this section the board may by rule establish such additional optional forms of annuities as it deems desirable. Such additional forms of annuities shall be based on actuarial equivalent values, with due regard to selection against the fund.

(11) **LUMP SUM PAYMENT IN LIEU OF ANNUITY.** Notwithstanding any other provision of this subchapter, any participant who is eligible to receive an ordinary annuity of less than \$25 per month under sub. (6) may elect, in lieu of such annuity, to receive a separation benefit as provided in s. 41.16.

(12) **RE-ENTRY INTO SERVICE.** (a) Notwithstanding the fact that any annuity is payable for life, if any participant under age 60 receiving a retirement annuity enters or is in the service of any participating municipality by which he was employed prior to the beginning date of the annuity, the annuity payable to such annuitant at that time shall be terminated as of the end of the month prior to the date upon which such person received total earnings in all such services in excess of \$1,200 in any calendar year. If an annuitant who has attained 60 is in the employment of a participating municipality by which last employed prior to the approval of the annuity and receives total earnings therefrom in any year in excess of the greater of \$1,200 or one-half of his annual final rate of earnings the annuity shall be terminated as of the end of the month prior to the receipt of such excess. Earnings under this subsection shall be construed to include also any payment received from any municipality for personal services, including services performed on a contractual basis.

(b) Upon subsequent retirement, a former annuitant shall be required to accept the same form of annuity as that under which he initially retired, and if such annuity is an optional annuity provided under sub. (8), the same beneficiary.

(13) **NOTICE OF EMPLOYMENT.** Whenever any participating municipality employs any person who is entitled to receive a retirement annuity from the fund, and who was formerly an employee of that municipality, the municipality shall give written notice of such employment to the fund within 15 days of the date of such employment specifying in such notice the name of the employe, his birth date and the date when his new employment began.

**41.12 Variable annuities.** (1) (a) Any participating employe may by written notice to the board elect to provide for a variable annuity

through a segregation of credits in his account to be accumulated from future contributions. Any person qualifying under s. 41.02 (6) except par. (c) may file such notice to be effective upon becoming a participating employe. Such notice of segregation is effective as of the beginning of the calendar quarter year following its receipt by the board.

(b) Such segregation shall continue in effect as long as the person filing the notice of segregation continues to be a participant and may not be reduced.

(c) Any segregation may be increased in the manner provided under par. (a), and when increased shall be subject to par. (b).

(d) The total amount segregated under this subsection shall not exceed one-half of the normal contribution.

(2) A portion of the municipality credit for current service provided by s. 41.08 (1) (a) 2. c, or in the case of segregations made after December 31, 1965, a portion of the municipality accumulation account, which is equal to the amount of the normal contribution segregated by a participating employe for a variable annuity pursuant to sub. (1) shall also be segregated for a variable annuity.

(3) In the case of any participating employe currently contributing toward a variable annuity any subsequent additional contribution made pursuant to s. 41.07 (2) (a) 7 shall be segregated for a variable annuity.

(4) (a) Any participating employe who has acted pursuant to sub. (1) may by written notice to the fund elect that one-half of the credits accumulated in accounts in his name prior to the effective date of the election under sub. (1) be segregated for a variable annuity. The aggregate amount so segregated shall be made in 5 equal annual instalments except that if such annual instalments would be less than \$1,000 the annual instalment shall be the lesser of \$1,000 or the amount required to complete the transfers.

(b) Such election shall be effective on the January 1 following receipt by the fund of the written notice, provided that any transfer pursuant to a notice received prior to January 1, 1970, shall be made in accordance with s. 66.9065 (4), 1967 stats. The amount determined to be eligible for transfer pursuant to a notice received prior to January 1, 1970, less the amount of any transfers made in accordance with s. 66.9065 (4), 1967 stats., shall be the amount eligible for subsequent transfers under this section.

(c) In effecting such segregation the accumulation of additional credits as of the beginning of the calendar year shall first be segregated until exhausted. Then equal amounts of the accumulation of normal credits and municipality credits

shall be segregated until such accumulations as of the beginning of the calendar year have been exhausted. Finally, accumulated prior service credits shall be segregated to the extent required, provided that after December 31, 1965, all such segregations of municipality and prior service credits shall be made within the municipality accumulation account.

(5) The board shall, except as specifically provided herein, have sole discretion to establish rules governing the amount of segregations for a variable annuity, which without limitation because of enumeration shall include the form, time and procedure for filing the notices, the minimum, maximum and unit amounts which may be segregated, both from current contributions and accumulated credits, the increasing of the amounts segregated, and other appropriate regulations. Such rules, among other things, shall fix procedures governing the operation of the variable annuity division, the frequency with which variable annuity payments are to be varied, and the mechanics of allocating the results of investment experience to the accounts of individuals having credits in the variable annuity division. The present value of any variable annuity at any time shall be determined in conformity with the actuarial tables in effect at such time.

(6) (a) Within the accounts maintained for each individual participant there shall be maintained a record of the amount of each type of credit segregated for a variable annuity. Credits so segregated shall not be credited with interest as provided in s. 41.08 (1) (b) 1 and 2, but in lieu thereof net gains or losses shall be credited or debited as the case may be as follows:

1. All balances so segregated at the beginning of each year remaining so segregated at the end of the year shall then be credited or debited at the rate of net gain or loss for the year.

2. All amounts so segregated during the year pursuant to sub. (4), or because of re-establishment of credit after cancellation of an annuity, remaining so segregated at the end of the year shall then be credited or debited at one-twelfth of the rate of net gain or loss for the year for each full month from the date so segregated to the end of the year.

(b) Credits segregated for a variable annuity at the beginning of each year and all amounts so segregated within the year pursuant to sub. (4), or because of re-establishment of credit after cancellation of an annuity, not remaining in such accounts at the end of the year because of the granting of annuities or death benefits during the year shall be credited with interest, on the first day of the month in which the first annuity or death benefit payment is due, for each full month elapsing between the first day of the

year or the date of credit, as the case may be, and the first day of the month in which such first annuity or death benefit payment is due, at one-twelfth of the effective rate of interest for the previous year.

(c) Fractions less than one-tenth per cent in the rate of net gain to be credited to any account pursuant to this subsection shall be disregarded.

(6a) Within the accumulation account maintained for each participating municipality pursuant to s. 41.19, there shall be established as of January 1, 1966, a segregated reserve for variable annuities equal to the sum of the accumulated municipality and prior service credits of all of its participants segregated for variable annuities. Such reserve shall be credited or debited with net gain or net loss as the case may be at the same times and at the same rates of each net gain or net loss as are credited or debited to the accounts of individual participants pursuant to sub. (6) (a) or (b). The segregated reserves maintained pursuant to this subsection shall be included in the variable annuity division.

(7) (b) The value of all securities and of uninvested funds of the variable annuity division shall notwithstanding s. 41.20 (2) be determined periodically on the basis of their then market value at intervals specified in the rules. The market value shall be the value certified by the investment board. For listed securities such shall be determined as of the close of the final market day at the end of the period; for unlisted securities it shall be determined to be the bid price; for real estate it shall be determined to be the value as appraised at intervals fixed by the Wisconsin retirement fund board. The net gain of the variable annuity division for any period shall be the excess of 1. the increase within the period in the value of the assets of the variable annuity division resulting from income from the investments thereof and from the sale or the appreciation in value of any investment thereof; over 2. the decrease within the period in the value of such assets resulting from the investment expenses of the variable annuity division and from the sale or the depreciation in value of any investments thereof. If the decrease exceeds the increase the amount of such excess shall be the net loss of the variable annuity division for the period.

(c) The rate of net gain or loss for any period shall be determined by dividing the amount thereof by the average of the amounts of the assets of the variable annuity division at the beginning of each month in the period. Any net gain or loss of the variable annuity division not credited or debited to participants' accounts pursuant to sub. (6) (a) or (b), to municipality segregated reserves pursuant to sub. (6a), or to the reserve for variable annuities granted ac-

count pursuant to sub. (9) at the end of any period shall be considered in the determination of the rate of net gain or loss for the ensuing period.

(8) (a) Any annuity provided pursuant to s. 41.11, 41.13 or 41.15 to a participant or the beneficiary of a participant whose accounts include credits segregated for a variable annuity pursuant to sub. (1) or (4) shall consist of a fixed annuity and a variable annuity. The initial amount of the variable annuity shall be the amount which can be provided on the basis of the actuarial tables in effect on the date of approval of such annuity by the following amounts, if otherwise available:

1. The amount of the accumulated additional credits reserved for a variable annuity as of the date the annuity begins;

2. The amount equal to 200% of accumulated normal credits reserved for a variable annuity as of the date the annuity begins; and

3. The amount equal, as of the date the annuity begins, to the accumulated prior service credits reserved for a variable annuity as of December 31, 1965, or thereafter transferred to the segregated reserves within the municipality accumulation account, together with the net gain or loss credited to such accumulations after such date.

(b) The initial amount of the fixed annuity shall be the excess of the total annuity payable pursuant to s. 41.11, 41.13 or 41.15, over the variable annuity.

(c) If the initial amount of the variable annuity so determined is less than \$10 the entire annuity shall be a fixed annuity.

(d) If the initial amount of the variable annuity so determined is at least \$10 and the amount of the fixed annuity is less than \$10 the entire annuity shall be a variable annuity.

(9) (a) All accumulated credits applied to provide variable annuities, including transfers from municipality accumulation accounts, shall be credited to the reserve for variable annuities granted account and all variable annuity payments shall be charged to that account.

(b) The balance at the beginning of any year in the reserve for variable annuities granted account, as adjusted by transfers thereto and payments therefrom, shall not be credited with interest as provided by s. 41.20 (2) (a) but shall be credited or debited, as the case may be, at the end of the year with net gain or loss at the rate of net gain or loss of the variable annuity division for the year.

(10) (a) Periodically the amount payable with respect to all variable annuities previously granted shall be redetermined so as to reflect the net gain or loss of the reserve for variable annuities

granted as determined by rule in accordance with actuarial procedures approved by the board of trustees on a basis which it deems appropriate from time to time and without limitation as to the nature of the procedures that may be adopted. The board of trustees may for as long as it deems desirable provide that the variation in the amounts payable under variable annuities shall not be affected by the fluctuations in the mortality experience under variable annuities granted.

(b) In conformity with the rules the rates of increase or decrease in the variable annuities previously approved shall be certified to the department of administration, and the department of administration shall make payments accordingly until a new certification is made.

(11) In addition to the changes made pursuant to sub. (10) variable annuities granted under ss. 41.11 (8) and (9) and 41.13 (2) shall be changed in conformity with the subsection under which granted.

**41.13 Disability annuities.** (2) **ELIGIBILITY.** (a) The following described persons shall be entitled to disability annuities, beginning on the dates hereinafter specified:

1. Any protective occupation participant who is a participating employee who has not attained age 60, but after June 30, 1969, who has not attained age 55, and any other participating employee who has not attained age 65 and is totally disabled, either mentally or physically, by a disability which is likely to be permanent. A person shall not be deemed to be disqualified solely because he is able to perform the duties of any position for which the compensation does not exceed \$1,200 in any calendar year. "Totally disabled" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of permanent duration. The participating municipality shall certify to the board that the participating employee is unable to continue in employment because of a total disability of such a nature as to reasonably prevent performance of the duties of any position and as a consequence is not entitled to any earnings from such municipality. For the purposes of this subsection a participant shall, within the limitations of s. 41.07 (1) (b), be considered to be a participating employee on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if no other employment has intervened since service for the participating municipality and if the termination of active service for the participating municipality was due to such disability. For the purposes of this subsection a participant who is an official elected by the vot-

ers shall be considered as a participating employe for 30 days after the cessation of his earnings as an elected official.

2. Except for a disability arising out of employment for a participating municipality, no participating employe shall be eligible for a disability annuity until he has completed at least 20 calendar quarter years of service as a participating employe for a participating municipality or municipalities in a position for which he received either current service or prior service credit within the 28 calendar quarter years preceding the date that the disability annuity begins. Service for any predecessor municipality shall be included in determining the completion of the 20 calendar quarter years.

3. Such annuities shall begin on the date such disability occurred, unless written application for such benefits is not received by the board within 60 days of such date, in which case, benefits shall begin to accrue on the day 60 days prior to the receipt of such application, or unless all earnings have not ceased to be payable to such employe on such date, in which case, benefits shall begin on the day following the day for which the last payment of earnings to such employe is made by any employing municipality.

(b) A participating employe shall be considered totally and permanently disabled only after the board has received written certification by at least 2 licensed and practicing physicians approved or appointed by the board, that the employe is totally and likely to be permanently disabled, for performance of the duties of any position.

(c) The amount of any disability annuity shall be the greater of the following:

1. The amount of the annuity to which he would be entitled under s. 41.11 (6).

2. The amount of the annuity that can be provided from the accumulation of additional credits on the date the disability annuity begins, plus the lesser of the following amounts: 50% of the final rate of earnings, or 1 1/2% of the final rate of earnings, but after June 30, 1969 1 3/4% of the final rate of earnings of a protective occupation participant, multiplied by the number of years of creditable service including in the latter assumed service between the date the disability occurred and the date on which the applicant will attain the age applicable to him under par. (a) 1. The number of such total years shall be determined to the nearest full year. Whenever the applicant becomes eligible for disability benefits or for old-age benefits as a retired worker under the OASDHI system, the amount of his disability annuity, other than the amount attributable to his additional contributions, shall be reduced by 20% of the amount thereof, but in no

event shall such reduction lower the disability annuity below that which could have been provided under subd. 1. Such reduction shall be effective with the annuity payment for the 8th month after the annuity begins except during such period as the disability annuitant furnishes evidence to the fund that he is not eligible for benefits from the OASDHI system.

(cc) If a person who has received a separation benefit subsequently becomes a participant, his service prior to the payment of such separation benefit shall be disregarded for purposes of determining his eligibility for, or the amount of, any benefit under this section.

(d) The board may require that any annuitant receiving a disability annuity shall be examined by at least one licensed and practicing physician appointed by the board during any period such annuitant shall receive such annuity and prior to the date on which the annuitant attains the age applicable to him under par. (a) 1. A written report of such examination, which shall indicate whether or not the annuitant is still totally and permanently disabled, shall be filed with the board by each such physician.

(e) If the report of any such physician indicates that the annuitant has recovered from disability and is able to perform the duties of any regular position for which the annual compensation exceeds \$1,200, or if the annuitant refuses to submit to such examination, the disability annuity shall terminate as of the end of the month previous to the date of determination by the board of such recovery or refusal.

(f) Notwithstanding the fact that a disability annuity is granted for life, if any disability annuitant shall receive or shall have received payment for personal services including any service performed on a contractual basis in any calendar year in excess of \$1,200 in cash or the equivalent in value such annuity shall be suspended by the board. Such annuity may be reinstated by the board as of the beginning of the month following board action, upon a showing by the annuitant that such personal services have terminated. The board may require certifications as to such payments for personal services prior to the subsequent issuance of annuity checks.

(3) LAW ENFORCEMENT AND FIRE-FIGHTING PERSONNEL (a) *Employes included.* Each participating employe who is a protective occupation participant shall be entitled to the special disability benefits provided by this subsection if he meets the requirements set forth herein.

(b) *Eligibility.* To be eligible therefor such person shall:

1. Have attained age 55, but have not attained age 60, but after June 30, 1969 have attained age 50, but have not attained age 55; and have been



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participating employe for not less than 15 years in the municipality by which he is employed; and

2. Have become physically or mentally disabled to such an extent that he can no longer efficiently and safely perform the duties required by his position, and such condition is unlikely to improve.

(c) *Benefit.* Any person who qualifies under this subsection shall receive a special disability benefit consisting of 2 components as follows:

1. A retirement annuity as provided under s. 41.11; and

2. A special disability annuity payable monthly during life of an amount which, when added to the monthly retirement annuity paid under subd. 1 (excluding any portion thereof based upon additional contributions), equals the lesser of a) 50% of the final rate of earnings of the employe at the time of application for benefits under this subsection, or b) the retirement annuity which would have been payable to such person if he had continued to be a participating employe in the same position and at the same salary until attaining age 60, but after June 30, 1969, until attaining age 55, assuming, for purposes of computing any applicable money-purchase annuity, the accumulation of all his credits at the prescribed rate of interest from the last day for which participating earnings were paid.

(d) *Application for benefits; reports.* A person who claims to be disabled as provided herein, may make written application to the board for benefits hereunder. The board shall make an investigation including examination of medical reports, and shall make a preliminary report as to whether or not a special disability benefit shall be granted. A copy of the report shall be served by mail on the applicant and on the municipality employing him.

(e) *Finality of report.* If neither the applicant nor his employer appeals to the board from its preliminary report within 20 days, the report shall be final.

(f) *Review; final determination.* Either the employe or the employer may request a review of the preliminary report by the board. Such a request for review shall be filed in writing within 20 days following receipt of the report by the employe or employer. The board shall thereupon be authorized to proceed pursuant to s. 20.901 to use the services of staff members of the department of industry, labor and human relations, including an examiner and reporter to provide for a hearing to be conducted by such examiner on behalf of the board. Such hearing shall be conducted pursuant to ss. 227.08 to 227.13, and the examiner shall submit to the board a written report of his findings together

with the summary of the evidence. The employer shall be considered a party to the proceeding. Thereupon the board shall make a final determination. Such determination shall be subject to review under ch. 227.

(g) Such disability annuity shall begin as provided in subd. (2) (a) 3.

(h) No payments shall be made under this subsection for any period as to which payments are being made under sub. (2). Payments under par. (c) 2 shall be suspended for any period during which the annuitant is employed in a law enforcement or fire fighting capacity in Wisconsin by any municipality as defined in s. 41.02 (4).

(4) **ELECTION OF BENEFITS; WAIVER.** Any person entitled to payments under this section who may otherwise be entitled to payments under s. 66.191 may file with the board and the department of industry, labor and human relations a written election to waive payments due under this section and accept in lieu thereof such payments as may be payable under s. 66.191, but no person shall receive payments under both s. 66.191 and this section. However, any person otherwise entitled to payments under this section may receive such payments, without waiver of any rights under s. 66.191, during such period as may be required for a determination of such person's rights under s. 66.191. Upon the final adjudication of such person's rights under s. 66.191, if waiver is filed under this section, such person shall immediately cease to be entitled to payments under this section and the fund shall be reimbursed for all payments made under this section, from the award made under s. 66.191, in accordance with such rules as are prescribed by the board and the department of industry, labor and human relations.

**41.14 Death benefits.** (1) The following described persons shall be entitled to death benefits, in the form and at the times hereafter specified:

(a) The beneficiary of any participant or of any annuitant on the date of death of the participant or annuitant, or if any beneficiary dies before his application for the death benefit is acted upon by the board, the surviving beneficiaries of the participant or annuitant.

(b) Any death benefit may be paid in the form of an annuity or in the form of a single cash sum as specified by the participant or annuitant in a written notice received by the board prior to his death or, in the absence of such written notice by the participant or annuitant, as specified by the beneficiary in the application for the death benefit.

(c) Whenever any death benefit is payable in a single cash sum, it shall be paid to the beneficiary as soon as practicable after receipt by the board of: 1. A certified copy of the death certificate of the participant or annuitant; 2. a written application of the beneficiary for such benefit, and 3. such additional evidence as the board deems necessary or desirable.

(2) The amount of the death benefit shall be:

(a) Upon the death of a participant whose beneficiary to whom the death benefit is payable is a spouse, parent, child (including legally adopted child), grandchild, brother or sister of such participant the amount equal to the accumulated normal and additional credits of such participant on the date of his death, plus the sum of the accumulated prior service credits and municipality credits in his account at the date of his death if prior to December 31, 1965, or otherwise the amount of such accumulated prior service and municipality credits at December 31, 1965, compounded to the first day of the month in which such death occurs, at the effective rates of interest as determined from year to year, or in the case of such amounts segregated in the variable annuity division, at the rates of net gain or loss credited or debited to individual accounts in the variable annuity division, except that the total accumulated municipality and prior service credits so compounded used to provide the total death benefit shall not exceed such respective credits which could have been used to provide an annuity for the deceased participant at the time of his death, assuming that such an annuity could have been granted to him at such time. No benefit shall be payable under this paragraph unless such participant at the date of his death was: 1) A participating employe; or 2) A participant who is receiving a benefit under s. 66.191, but who is not an annuitant; or 3) A participant, other than an annuitant, who had prior or current service credit, or both, for at least 60 calendar quarter years as a participating employe, or 4) A participant who is currently contributing to the state teachers retirement system or the Milwaukee teachers retirement fund. For the purposes of this paragraph, a participant is deemed a participating employe on the date of his death if he is then an applicant for a retirement annuity whose application has been received within 30 days after termination of employment and who would have been entitled to such annuity had he lived, and a participant is deemed a participating employe on leave of absence, subject to the limitations of s. 41.07 (1) (b), if the participating municipality for which he last performed services as a participating employe has not filed notice of the termination of his employment, notwithstanding the fact that no formal leave of

absence is in effect. If the death of a participating employe on leave of absence arises from employment by any employer other than such participating municipality his employment shall be deemed to have terminated and he shall not be considered a participating employe on the date of his death.

(b) Upon the death of a participant, other than an annuitant, or a participant whose beneficiary or beneficiaries are entitled to receive a death benefit under par. (a), the amount equal to the sum of the accumulated normal and additional credits of the participant as of the time of death.

(c) Upon the death of a person receiving a disability or retirement annuity other than an annuity under s. 41.11 (7) or (8), or a person who had been granted a disability or retirement annuity which had not commenced, the excess of the sum of the accumulated additional and normal credits of such annuitant which were used at the time the annuity began to provide the disability or retirement annuity, over the sum of all annuity payments to which he had become entitled prior to his death.

(d) Upon the death of an annuitant receiving a beneficiary annuity, the excess of the accumulated normal and additional credits of the employe which were used at the time the annuity began, over the sum of all annuity payments to which such beneficiary had become entitled prior to his death. If the annuity is paid pursuant to par. (e) the accumulated normal and additional credits used for such annuity shall be reduced by the sum of all disability annuity payments.

(e) Upon the death of a participant receiving a disability annuity under s. 41.13 (2) or a person who had been granted such a disability annuity which had not commenced, if a beneficiary or beneficiaries to whom a death benefit is payable are a wife, minor child, or dependent husband designated as beneficiaries on the date the disability annuity was approved:

1. If such death occurs prior to the normal retirement date of the participant, the present value, at the date of death of such annuitant, of a beneficiary annuity (terminating in the case of a minor child at the end of the month in which he reaches the age of 21) of the monthly amount to which such beneficiary would have become entitled if death had occurred on the day prior to the date on which the disability annuity commenced and if the death of the beneficiary or beneficiaries who failed to survive the disability annuitant had occurred prior to said date. For the purposes of this paragraph present values shall be determined in accordance with the prescribed rate of interest and approved actuarial

tables in effect on the date of approval of such death benefit by the board; or

2. If such death occurs on or after his normal retirement date, the excess of the accumulated normal and additional credits of the participant at the date the annuity began, over the sum of all annuity payments to which he had become entitled after his normal retirement date.

(em) Payment under par. (e) shall be completely in lieu of any payment to such beneficiary under par. (c), provided that if the death benefit payable to such beneficiary under par. (e) would be less than the amount determined under par. (c) the death benefit shall be payable under par. (c) and par. (e) shall not be applicable to such beneficiary.

(f) Upon the death of a participating employe within 3 years after credits have been re-established in his account pursuant to s. 41.08 (1) (a) 3, in lieu of any death benefit otherwise payable, the excess of the accumulated normal and additional credits used to provide the terminated annuity over the sum of all annuity payments to which the employe had become entitled, to which shall be added the amount of the accumulations on the date of death from the normal and additional contributions made by him after the date of the termination of his annuity.

(g) Upon the death, after December 31, 1965, of a participating employe who has attained the age of 60 years, or upon the death after June 30, 1969, of a protective occupation participant who has attained age 55, if par. (f) is not applicable, and if the beneficiary to whom a death benefit is payable is a spouse, child under age 21 (including legally adopted child), child age 21 or older if handicapped, or other dependent of such participating employe, as determined by the board, the present value at the day following the date of such death of the life annuity to the beneficiary which would have been payable if the participating employe had been eligible to receive a retirement annuity beginning on the date of his death and had elected to receive such annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount payable during his lifetime; but if there is more than one such beneficiary the amount of such annuity and its present value will be determined as if the oldest of such beneficiaries were the sole beneficiary. Payment hereunder shall be completely in lieu of any payment to such beneficiary under par. (a), but if the death benefit payable to such beneficiary under this paragraph would be less than the amount determined under par. (a) the death benefit shall be payable under par. (a) and this paragraph shall not be applicable to such beneficiary.

**41.15 Beneficiary annuities.** (1) Any death benefit paid in the form of an annuity shall be considered a beneficiary annuity, provided:

(a) The beneficiary is the widow or minor child of the participant or annuitant, or

(b) The beneficiary is other than the widow or minor child of the participant or annuitant, but such beneficiary has specified in the application for the death benefit, or the participant has so specified in a written notice received by the board prior to his death, that such benefit shall be paid as an annuity.

(1a) Any beneficiary may elect to receive an annuity if the amount of any death benefit is sufficient to provide an immediate annuity of at least \$10 for the beneficiary.

(2) Whenever any death benefit is payable in the form of an annuity, such annuity shall begin on the day following the date of death of the participant or annuitant provided the board has received:

(a) A certified copy of the death certificate of the participant or annuitant, and

(b) A written application of the beneficiary for such benefit.

(3) The amount of any beneficiary annuity shall be that which can be provided from the death benefit on the date such annuity begins in accordance with the prescribed rate of interest and the approved actuarial tables in effect on the date of approval of such annuity by the board.

(4) A beneficiary who is a spouse may, in lieu of a life annuity, elect to receive an annuity pursuant to s. 41.11 (7) and all of the provisions of s. 41.11 (7), relating to a participant, shall apply to such spouse.

(5) A beneficiary who is a widow of a participant or annuitant may, in lieu of a life annuity, which annuity is to begin prior to the widow's 62nd birthday, elect to take the actuarial equivalent thereof as:

(a) A reduced annuity payable monthly for life, plus

(b) A temporary annuity payable monthly and terminating with the payment due in the month in which the widow attains age 62.

(c) It is the intent of the option provided in this subsection that so far as is practicable such life annuity and temporary annuity will be determined in such amounts that the widow's total anticipated retirement benefits from the fund and her survivors benefit from the federal OASDHI system will be the same both before and after attainment of age 62. Section 41.14 (2) (d) shall apply to an annuity granted under this subsection.

(6) The legal or natural guardian of a minor beneficiary when the participant or annuitant

has not specified in a written notice received by the board prior to his death that the death benefit shall be paid as a life annuity, may, in lieu of a life annuity, elect that such beneficiary receive the death benefit in the form of a temporary annuity of \$50 per month beginning on the day following the date of death of the participant or annuitant and ending with the monthly payment immediately prior to the beneficiary's 21st birthday and a final payment, payable one month after the termination of the temporary annuity, of such amount as can be provided from the death benefit, after providing for the temporary annuity, on the basis of the prescribed rate of interest and the approved actuarial tables in effect on the date of approval of such option by the board, provided:

(a) The beneficiary, prior to the payment of the final payment, may, if the amount of such final payment is sufficient to provide an immediate life annuity of at least \$10 for the beneficiary, elect to receive, in lieu of such final payment, an immediate annuity commencing on the day following the due date of such final payment.

(b) If the death benefit is not sufficient to provide such a temporary annuity of \$50 per month, the amount of each such temporary annuity payment shall be reduced to such amount as can be provided from the death benefit, in which event there shall be no final payment.

(c) A temporary annuity granted under this subsection shall be considered a beneficiary annuity for the purposes of determining the death benefit payable under s. 41.14 (2) (d).

(7) A participant or annuitant may elect by written notice to the board that a death benefit payable to a minor beneficiary shall be paid pursuant to sub. (6).

(8) The annuity granted to a beneficiary who is a minor child entitled to a death benefit under s. 41.14 (2) (e) shall terminate at the end of the month in which he attains age 21.

**41.16 Separation benefits.** The following described persons shall be entitled to separation benefits at the times hereinafter specified:

(1) Any participant who is not employed by a participating municipality and who at the time of application therefor would not be entitled to either a retirement or disability annuity beginning immediately. Subsequent employment by a participating municipality prior to approval of the separation benefit shall cancel the application. Irrespective of the restrictions provided in this subsection any person not entitled to a retirement annuity or a disability annuity shall 6 months after he is last a participating employe become eligible to apply for and receive a separation benefit.

(2) Such separation benefits shall be paid in the form of a single cash sum as soon as practicable after receipt by the board of both a written application by the participant for such benefits and a written notice from the last employing municipality certifying that such participant has ceased to be a participating employe. The amount of any separation benefit shall be the sum of the accumulated additional credits and normal credits of the participant, including all investment income credited to the first day of the year in which the separation benefit is scheduled for payment, as provided by rule of the board.

**41.17 Investment of assets.** (1) The assets of the fund, in excess of the amount of cash required for the current operations as determined by the board, shall be invested and reinvested as provided by s. 25.17 (3) (a) and (4).

(2) All securities purchased with assets of the fund or safekeeping receipts therefor shall be kept by the state treasurer in boxes or portfolios clearly marked to indicate the ownership of such securities and receipts by the fund.

**41.18 Funds.** (1) All money received by the board shall immediately be deposited with the state treasurer for the account of the fund. All disbursements shall be made pursuant to authorization by the board as properly recorded in the official minute books of the meetings of the board, except that disbursements for securities purchased and the payment of accrued interest thereon and for any other investments shall be made upon certification of the investment board.

(2) All investments and other evidences of title to property of the fund when received shall also be deposited with the state treasurer who shall provide adequate safe deposit facilities for their preservation and who shall have custody of all the assets of the fund.

(3) The assets of the fund shall be mingled in one fund, and no particular person or municipality shall have any right in any specific item of cash, investment or other property other than an undivided interest in the whole as provided by this subchapter.

(4) The fund may refund any money paid in error into the fund. To effect such a refund the name of each person or municipality entitled to a refund and the amount thereof shall be certified to the department of administration. Thereupon and notwithstanding s. 20.913, the department of administration shall draw its warrant for the amount and in favor of the person or municipality so certified, and the state treasurer shall pay the same and charge it to the appropriation made by s. 20.515 (1) (w).

**41.19 Municipality accumulation accounts.** (1) For the purposes of establishing reserves for the future payment of benefits to participants, a separate accumulation account in the name of each participating municipality shall be created as of January 1, 1966, and maintained as hereinafter described. The accumulation account of any municipality shall be:

(a) Credited as of January 1, 1966, with the aggregate accumulations of prior service, municipality, including additional municipality, and military service credits in the accounts of all participants of the municipality on December 31, 1965.

(b) Debited as of January 1, 1966, with the aggregate amount of the debit balance in the obligation accounts of the municipality on December 31, 1965. If any such obligation account on December 31, 1965, has a credit balance the amount thereof shall be credited to the accumulation account.

(c) Credited as of the date due with the same proportion of each contribution for any calendar year paid by the municipality pursuant to s. 41.10 (1) (a) which the aggregate of the percentages applicable for such year to s. 41.10 (2) (a), (b) and (d) bears to the total percentage determined under s. 41.10 (2) for such year. The proportions of such contributions applicable to s. 41.10 (2) (c) shall not be credited to any municipality accumulation account.

(d) Credited as of the date of receipt with the amount of any payment received from the municipality pursuant to s. 41.10 (1) (b) and (5).

(e) Debited as of the last day of each month in which any benefits are granted on account of participants of the municipality with the aggregate excess of 1) the amount of each single sum benefit or in the case of an annuity the present value thereof at the date it begins, over 2) the amount equal to the accumulated additional and normal credits of the participant, plus, in the case of a disability annuity, the amount financed pursuant to s. 41.10 (2) (c).

(f) Credited as of the date of termination of any annuity pursuant to s. 41.11 (12) (a) or 41.13 (2) (e) with the excess of the then present value of the terminated annuity over the aggregate amount of credits reestablished in the accounts of the participant.

(g) Credited as of each December 31 with interest at the effective rate on the mean balance for the year then ending of the accumulation account not segregated for variable annuities pursuant to s. 41.12 (6a). The mean balance for any year of an accumulation account shall be determined as one-half of the sum of the balance at the beginning of such year plus the balance at

the end of such year, but prior to crediting interest pursuant to this paragraph.

(h) Interest shall be credited at the end of the year, at the effective rate from the date of receipt, on all contributions received in accordance with s. 41.10 (1) (b); but all such contributions, for the year in which they are received, shall be excluded from the computation of the mean balance required to be determined pursuant to par. (g).

(2) (b) Interest shall be charged on accounts receivable from any municipality, except the state, for both employe and municipality contributions if the remittance and payroll report are not received by the fund on its last working day of the calendar month following the due date at the rate of one-half of one per cent for each month or fraction thereof, from the due date to the date received by the fund with a minimum charge of \$3, and such interest or minimum charge shall be paid forthwith to the fund, and if it is not paid within 60 days after it is payable, it shall be collected as provided in s. 41.21 (1a).

(c) Any such interest chargeable on employe and municipality contributions from a department or agency of the state shall be payable if the monthly payroll report provided for by s. 41.07 (2) (b) is not received by the fund on or before the 20th day of the calendar month following the due date; when any such interest is payable the board of trustees shall certify the amount thereof with an explanation of such charge, together with a voucher in payment therefor to the department of administration which shall forthwith approve such voucher and charge the same to the appropriation of the department, board or commission which failed to submit its payroll report to the board of trustees on time. The state treasurer shall forthwith issue his checks therefor to the Wisconsin retirement fund.

(3) Separate accounts shall be maintained for each participating employe and for each municipality. Transactions affecting the employes of any municipality shall not affect the accounts of any other municipality.

(4) Whenever any sum which is due to the fund from any participant cannot be recovered from such participant, the last participating municipality by which the participant was employed shall be charged with said sum if such sum became due as the result of incorrect or incomplete reporting by such participating municipality.

**41.20 Surpluses and reserves.** (1) The surpluses arising out of the operations of this fund shall be classified and determined as follows:

(a) The annuity payment surplus shall be determined as of the end of each year as the amount by which the reserve for annuities previously granted exceeds the actuarially determined liability with respect to such annuities. Whenever such surplus exceeds 25% or there is a deficiency exceeding 15% of such reserve, the tables used for the determination of annuities shall be revised in such manner as the board deems equitable. The board may order and make such distribution of said annuity payment surplus as it deems equitable.

(b) The disability benefit surplus shall be determined as of the end of each year as the amount by which 1) accumulated contributions pursuant to s. 41.10 (2) (c), of all municipalities for all prior years and the current year, exceeds 2) the amounts required to provide, when added to the present values of the annuities to which the employees would be entitled under s. 41.11 (6), the present value of all benefits to participating employees granted disability annuities pursuant to s. 41.13 (2) as of the date of commencement of such disability annuities. Amounts required to provide disability annuities terminated pursuant to s. 41.13 (4) shall be excluded from the termination of the disability surplus. Whenever the disability benefit surplus or deficiency exceeds 100% of the average annual requirements under 2) during the 3 preceding calendar years, the contribution rates for disability benefits shall be revised in such manner as the board deems necessary to reduce such surplus or deficiency.

(2) Reserves shall be established for the purposes and in the manner described below:

(a) Separate reserves for annuities granted equal to the present value as of the date of commencement of all retirement, disability and beneficiary annuities previously granted; plus interest on the mean amount of such reserve during each calendar year, computed at not less than the prescribed rate; reduced by the aggregate amount of annuity payments and death benefits paid with respect to such annuities; and reduced by the present value at the date of termination of all annuities terminated in accordance with s. 41.11 (12) (a) or 41.13 (2) (e); and reduced by the amount by which the present value as of the date of commencement of all disability annuities which were terminated in accordance with s. 41.13 (4) exceeds the amount reimbursed. As of any January 1 on which the surplus with respect to disability annuities granted exceeds 5% of the reserve for such annuities, such excess shall be added to the disability benefit surplus and deducted from the reserve for disability annuities granted.

(b) A reserve for investment losses shall be established in such amounts as the board from time to time determines from the interest income and profits on investments. For purposes of determining the interest income in any year, investments shall be carried at a book value such that the yield to maturity will remain uniform. No adjustments in the book value of investments shall be made on account of fluctuations in current market prices.

(c) The board may transfer the balance in the death surplus account which was eliminated by chapter 55, laws of 1955, to any fund account now existing or hereafter created. The board may create such reserves as it deems advisable.

(3) Administrative costs determined pursuant to s. 40.01, except expenses of the variable annuity division, shall be charged to the investment income of the fixed annuity division. Expenses of the variable annuity division shall be charged to the investment income of the variable annuity division.

**41.21 Authorizations.** (1) Each participating municipality shall be:

(a) Authorized and directed to deduct all normal and additional contributions from each payment of earnings payable to each participating employee who is entitled to any earnings from the municipality. All such contributions shall be due and be deposited in the office of the board not later than the end of the month in which the earnings are paid.

(b) Authorized and directed to pay to the board concurrently with each remittance of employee contributions deducted from earnings, the corresponding municipality contribution out of the general fund or any special fund from which the earnings were paid, except as provided in s. 41.10 (8).

(1a) Whenever any participating municipality shall fail to pay to the board any of the amounts specified in sub. (1), the board shall certify such amount or the estimated amount thereof to the department of administration which shall withhold such amount or estimated amount from the next apportionment or apportionments of state aids or taxes of any kind payable to such participating municipality and shall pay the amount so withheld to the fund. When the exact amount due is determined and the fund shall have received a sum in excess of such amount the fund shall pay such excess amount to the participating municipality from whose aid such excess was withheld.

(1b) If any participating municipality shall fail to transmit to the fund any report which it is required to submit thereto by law or by any rule or regulation established pursuant thereto

for 30 days after the date when such report is due, the board shall cause such report to be prepared. Thereupon the board shall submit to said participating municipality a statement of the expenses incurred in securing such report, including the value of the personal services rendered in the preparation of the same. Duplicates of such statement shall be filed in the office of the department of administration. Within 60 days after the receipt of the above statement by the participating municipality such statement shall be audited as other claims against the municipality are audited and shall be paid into the state treasury and credited to the appropriation made by s. 20.515 (1) (w). In default of payment by the participating municipality, the amount specified in the aforesaid statement shall become a special charge against the participating municipality and shall be included in the next certification of state taxes and charges and shall be collected, with interest at the rate of 10% per annum from the date such statement was submitted to the participating municipality, as other charges are certified and collected, and when so collected such amount and said interest shall be credited to the appropriation made by s. 20.515 (1) (w).

(2) Each participating employe shall, by virtue of the payment of any contributions to this fund, receive a vested interest in the annuities and benefits provided in this subchapter and each such employe in consideration of such vested interest in this fund shall be deemed to have agreed and authorized the deduction of all contributions payable to this fund in accordance with this subchapter from the payments of earnings by the employing municipality.

(3) Payment of earnings less the amounts of contributions provided in this subchapter shall be a full and complete discharge of all claims for payment for services rendered by any employe during the period covered by any such payment.

**41.22 Assignments.** (1) (a) None of the moneys in the fund shall be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment or other legal process. Insurance premiums for those annuitants insured under subch. II of ch. 40, however, shall be deducted from the annuity, if the annuity is sufficient, and paid to the credit of s. 20.515 (2) (w) and the annuitant may also direct, in such form as the board determines, that premiums be deducted for supplementary medical coverage under federal social security and such moneys paid to the social security administration.

(b) The board may retain out of any annuity or benefit such amount as the board in its discretion may determine, for the purpose of reimburs-

ing the fund for any money paid to any annuitant, beneficiary or participant through misrepresentation, fraud or error. Upon the request of the board any municipality shall withhold from any sum payable by such municipality to an annuitant, beneficiary or participant and remit to the board any amount which the board paid to such annuitant, beneficiary or participant through misrepresentation, fraud or error.

(2) In all cases in which any amounts become payable to a minor or to a person adjudged insane or mentally incompetent, the board in its discretion may waive guardianship proceedings, and pay such amounts to the person providing for, or caring for, such minor, or to the wife, parent or blood relative providing for, or caring for, such insane or incompetent person.

(3) Any action, decision or determination of the board shall be reviewable only by a writ of certiorari, and any party to such certiorari proceedings shall have the right of appeal from the decision of the reviewing court.

(4) The board and the fund shall be held free from any liability for any money retained or paid in accordance with this section and the employe shall be assumed to have assented and agreed to any such disposition of money due.

(5) Whenever any annuitant shall receive any annuity payment while in the service of any municipality contrary to s. 41.11 (12) or 41.13 (2) (f), it shall be the duty of such municipality to withhold and remit to the board a sum equal to the annuity paid erroneously to the extent of any sums payable by such municipality, and any amount not recovered by the fund from the municipality may be procured by the fund pursuant to sub. (1) (b) or by action brought against such annuitant or his estate.

(6) Any person entitled to an annuity may decline to accept all or any part of such annuity by a waiver signed and filed with the board which irrevocably abandons all claims or rights to the sums waived as of a specified date. Such waiver may be revoked in writing filed with the board at any time, to be effective as of the beginning of the month following the receipt by the board, but such revocation of the waiver shall not reinstate any right to the sums waived.

(7) (a) Any person who has total accumulated credits in the Wisconsin retirement fund aggregating less than \$200 as of the end of the calendar year in which he ceased to be a participating employe thereunder and has not dealt therewith for a period of 7 years thereafter by requesting in writing that the account be continued, or by furnishing his latest address to the fund, or otherwise has asserted any claim to such moneys shall be presumed, unless it be shown to the

contrary, to have died intestate, without heirs, or to have abandoned such moneys.

(b) That portion of said moneys which consists of the contributions of the individual and interest thereon to the beginning of the year in which he ceased to be a participating employe shall escheat and be credited to the common school fund and become a part thereof subject to subs. (3) and (4).

(c) The accumulated prior service credits and municipality credits including interest to the beginning of the year in which the individual ceased to be a participating employe shall be credited to the obligation accounts of the municipality or municipalities which provided such credits.

(d) Annually the director of the Wisconsin retirement fund shall certify to the state treasurer the names of persons having accounts in the Wisconsin retirement fund described in par. (a), the amount thereof and the portion of such account which represents the contributions of the individual and interest thereon. Upon the receipt of such certification the state treasurer shall forthwith publish a notice in the official state paper stating the names of such persons, name of last employing municipality, the respective amounts of their credit representing the contributions of the individual and interest thereon to the beginning of the year in which the person ceased to be a participating employe, the fact that said amounts have escheated to the common school fund and the fact that said amounts will be paid to the respective owners thereof or their respective heirs or legatees, without additional interest, on proof of such ownership, if applied for within 5 years from the date of publication, except that if any such person is a minor or a person adjudged insane or mentally incompetent the period of limitation shall be extended to one year after attaining majority or removal of the disability, whichever the case may be.

(e) Whenever, within said period of 5 years (except as set forth in par. (d)), any person files a claim therefor and furnishes proof of ownership of any of the aforesaid amounts which have escheated to the common school fund sufficient to satisfy the state treasurer, secretary of state and attorney general of the right of said claimant to the aforesaid amounts, such claim shall be paid upon the written approval of said 3 state officers.

#### SUBCHAPTER II CONSERVATION WARDENS PENSION FUND.

#### 41.30 Definitions. In this subchapter:

(1) "Fund" means the conservation wardens pension fund.

(2) "Board" means the conservation wardens pension board.

(3) (a) "Conservation warden" means only those persons classified by the department of administration as conservation wardens, whose salaries and expenses are paid by the department of natural resources and whose permanent appointments as conservation wardens have been approved by that department.

(b) If any person, who is employed for 10 years or longer as a conservation warden and who, thereafter, is transferred to any other position in the department of natural resources, fulfills all the other requisites of this subchapter, he is eligible to receive the benefits under this subchapter. Such person shall continue to pay into the wardens pension fund a sum equal to 5% of his monthly salary as an employe of the department of natural resources. After such person completes 25 years of combined employment service in the department of natural resources, and has attained the age of 55 years, he is eligible to receive a pension monthly of a sum equal to 2% of his average monthly compensation for the last 3 years preceding his retirement or discharge for each year or major fraction thereof of service prior to 1955 and 1.43% thereof for each year or major fraction thereof beginning in 1955, but not to exceed an aggregate of 25 years, but such pension shall not exceed a sum equal to one-half of his average monthly compensation for the last 3 years preceding his retirement or discharge received as an employe of the department of natural resources.

(c) If a person, who was employed as a conservation warden for 10 years or more, and who was transferred to another position in the department of natural resources and who is holding such other position on July 15, 1937, fulfills all the other requisites of this section, he is eligible to receive the benefits of this section by paying before July 1, 1938, into the fund a sum, computed from July 17, 1935, equal to 3% of the last monthly salary earned as conservation warden. Thereafter, the payments shall continue monthly at the same rate until a pension is granted.

**41.31 Conservation wardens pension fund.** (1) A fund shall be set aside for the pension of disabled and superannuated conservation wardens and the widows or orphans of deceased conservation wardens. The state treasurer shall be ex officio treasurer of such fund.

(2) There shall be paid into such fund 5% of the monthly salary of each conservation warden, which shall be deducted by the department of natural resources from such monthly salary.



(3) Effective for salaries received after June 30, 1967, the state shall deposit, in lieu of an equal amount of the deposits required from each warden under sub. (2), an amount equal to 2% of each conservation warden's salary. The amount to be deposited by the state under this subsection shall be increased on July 1, 1969, to 2 1/2%, on January 1, 1970, to 3% and on July 1, 1970, to 4% of each conservation warden's salary. Such deposit shall be credited to the account of each warden and shall be available for all benefit purposes to the same extent as normal deposits which are deducted from the earnings of such conservation warden, except that the amount of any payment under s. 41.35 shall be reduced by an amount equal to 2% of the annual earnings received by the conservation warden from the state after June 30, 1967. For purposes of computing pension fund contributions, pension fund benefits, and maintaining accounts, all salaries earned, but not paid, prior to July 1, 1967, shall be deemed to have been paid prior to July 1, 1967.

Note: Sub. (3) is printed as amended by Chaps. 154, sections 125 and 378, 158 and 245, section 9, laws of 1969. See sections 14 and 16 of Chap. 245, laws of 1969.

(4) All fees or emoluments that may be paid or given for or on account of any service of said conservation wardens or any of them, except when allowed to be retained by them by resolution of said board, shall be paid into such fund.

**41.32 Conservation wardens pension board; powers and duties.** (1) The board shall:

(a) Have exclusive control and management of the fund created under s. 41.31, except as to investment under s. 41.33, and all money donated, paid or assessed for the relief or pensioning of disabled, superannuated or retired conservation wardens, their widows and children, and the same shall be placed by the state treasurer to the credit of such fund, subject to the orders of the board.

(b) Make rules for the control of the conservation wardens pension fund.

(c) Decide all applications for relief or pension under this subchapter.

(d) Keep a permanent record of all proceedings of the board.

(2) The board may take by grant, gift, devise or bequest, any money, real estate or other valuable things, personal property or right of property, and the same shall be paid into the fund.

(3) The state treasurer shall be the custodian of the conservation wardens pension fund subject to the control and direction of the board and shall keep his books and accounts concerning said fund in such manner as the board directs,

rendering an account to the board on July 1 of each year.

(4) All moneys ordered to be paid out of the conservation wardens pension fund to any person shall be paid by the state treasurer only upon warrant drawn by order of the board duly entered in the record of the proceedings of the board. If the fund or any part thereof, by order of the board or otherwise, is deposited in any bank or loaned, all interest on money which is paid or agreed to be paid on account of any such loan or deposit shall belong to and constitute a part of such fund, but nothing herein contained shall be construed as authorizing the treasurer to loan or deposit the fund or any part thereof unless so authorized by the board.

(5) The conservation wardens pension fund shall be construed to be a trust and each member of the conservation wardens pension board shall be deemed a trustee.

**41.33 Investment.** The assets of the fund, in excess of the amount of cash required for current operations as determined by the board, shall be invested and reinvested by the investment board under s. 25.17 (1).

**41.34 Disability benefits.** (1) If any conservation warden, while engaged in the performance of his active duty as such warden, is injured or sick and if found, upon examination by a medical officer ordered by said board, to be physically, mentally or permanently disabled by reason of such injuries or sickness, so as to render necessary his retirement, the board shall retire such disabled member from the service, but no such retirement shall be ordered unless the warden has contracted such disability, or sickness, while in line of duty. Upon such retirement the board shall order payment to such retired member, monthly, from the conservation wardens pension fund, of a sum equal to one-half the monthly salary or compensation received by him immediately prior to his retirement.

(2) If before attaining age 55 a member of this fund becomes unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, not arising from the performance of his duty, which can be expected to result in death or to be of long-continued and indefinite duration and which has been established on the basis of medical evidence satisfactory to the board, the board shall retire such disabled member from the service. Upon such retirement the board shall order monthly payment to such retired member from the conservation wardens pension fund of the lesser of the following amounts:

(a) Fifty per cent of the member's average monthly compensation during the last 5 years of service; or

(b) One and one-half per cent of the member's average monthly compensation during the last 5 years of service, multiplied by the number of years of service as a member of this fund, determined to the nearest full year, including assumed service during the period between the date of the occurrence of the disability and the date on which the member will attain the age of 65.

(c) Whenever the recipient could upon filing application therefor become entitled to a disability insurance benefit or a primary insurance benefit under the federal OASDHI system, any amount payable under this subsection shall be reduced by 20%.

**41.35 Resignations.** Any conservation warden leaving the state conservation warden service for any cause whatsoever prior to his eligibility for retirement under this subchapter shall receive from the conservation wardens pension fund all amounts he has paid into the fund. If any conservation warden dies prior to his eligibility for retirement under this subchapter, all amounts he has paid into the conservation wardens pension fund shall be paid to his heirs. This section shall apply retroactively to all such retirements and deaths since July 15, 1935.

**41.36 Death benefits.** (1) If any conservation warden, while in the performance of his duty, is killed or dies as the result of an injury received in the line of duty as prescribed in s. 41.34 (1), or if any such warden after 15 years of service in such department dies from any cause while in the service, or if any member dies from any cause after being retired upon a pension under this subchapter and leaves a widow or minor child, or children under the age of 16 years, the board shall direct the payments from the fund of the following sums monthly: To the widows of conservations wardens \$50; to the guardian of such minor child or children \$8 for each child until it reaches the age of 16 years, and in the case of death of the widow the amount she is entitled to under this section shall be paid to or for the benefit of such minor children of the deceased as are under the age of 16 years, but there shall not be paid to the family of the deceased member a total pension exceeding one-half the amount of monthly salary of such deceased member at the time of his death, or, if a retired member, a sum not exceeding one-half of the monthly salary of such retired member at the date of his retirement or disability. If the pensioner marries after his re-

tirement from service and thereafter dies leaving a widow, such widow shall not be entitled to any relief or pension from such funds.

(2) (a) In the case of any member of the conservation wardens pension fund who dies after December 31, 1957, while in the service of the department of natural resources, his widow and children shall be entitled to a death benefit payable monthly under sub. (1), which is the actuarial equivalent of twice the accumulation which would have resulted from the contributions made by such member under ss. 41.30 (3) (b) and 41.31 (2) if interest had been compounded thereon at the rate of 3% per annum.

(b) Such monthly payments shall not be less than the amount specified in sub. (1), but if such supposed accumulation is sufficient to pay monthly benefits in excess of the amount specified in sub. (1) the additional amount shall be paid as a life annuity to the widow. If there is no widow such additional amount shall be payable monthly as an annuity to the children of such deceased member during their minority or longer, as the board determines. The total amount payable monthly under sub. (1) and this subsection shall not exceed one-half the monthly salary of the deceased member at the time of his death.

(c) The additional death benefit payable to a widow under this subsection may at her option be paid in the manner permitted under the Wisconsin retirement fund by s. 41.15 (4), in lieu of a life annuity.

(d) In determining the actuarial equivalent value of the death benefits under this subsection the board shall apply the annuity rates adopted for use by the Wisconsin retirement fund under subch. I.

**41.37 Retirement benefits.** (1) If any conservation warden retires after having attained the age of 55 and having served 25 years or more in the department of natural resources, and if any member is discharged after having attained the age of 55 and having served 25 years or more, the board shall order that such member be paid a pension monthly of a sum equal to 2% of his average monthly compensation for the last 3 years preceding his retirement or discharge for each year or major fraction thereof of service prior to 1955 and 1.43% thereof for each year or major fraction thereof beginning in 1955, but not to exceed an aggregate of 25 years, but such pension shall not exceed a sum equal to one-half of his average monthly compensation for the last 3 years preceding his retirement or discharge. No person shall be entitled to receive any benefit from

such pension fund other than that described under this subchapter.

(2) The department of natural resources may not require any employe, who is a member of this fund, to retire until he has reached 62 years of age.

**41.38 Alternative benefits.** Notwithstanding any other provisions of this subchapter, any conservation warden, or other member of the conservation wardens pension fund, who is eligible to receive a pension under s. 41.30 (3) (b), 41.34 (1) or 41.37, which pension is to begin before the warden's or other member's 65th birthday, may elect, if he has attained fully insured status under the federal OASDHI system, in lieu of such pension, to take the actuarial equivalent thereof based on actuarial tables in use by the Wisconsin retirement fund as:

(1) A reduced pension payable monthly for life, plus

(2) A temporary pension payable monthly and terminating with the payment due in the month in which the warden or other member attains age 65. It is the intent of this option that so far as is practicable the aforesaid life pension and temporary pension will be determined in such amounts that the warden's or other member's total anticipated retirement benefits from the fund and from primary social security will be the same both before and after attainment of age 65, assuming that the warden or other member has no further wages credited to his account under the federal OASDHI system after retirement under this subchapter.

**41.39 Cut-off date.** No person who prior to January 1, 1948, had not contributed to the conservation wardens pension fund shall be permitted to contribute to such fund or become a member thereof on or after such date; nor shall he or his widow, child or dependent parent be, or become, entitled to receive any benefit from such fund. Any person who, after December 31, 1947, becomes a conservation warden, or who was a conservation warden on that date, but who, in each such case had not, on or before such date, properly contributed to the conservation wardens pension fund, and who can otherwise qualify, shall become a participating employe under subch. I. If any such participating employe is entitled to a prior service credit, he shall be given such credit at the 2 rate.

**41.40 Actuarial examination.** On or before September 1, 1949, and on or before September 1 of each 4th year thereafter, the office of the commissioner of insurance shall cause an actuarial examination of the conservation wardens pension fund to be made. The examination shall

determine the approximately equal annual payments necessary to amortize the deficit in the fund over the period ending 40 years from September 17, 1949. The commissioner of insurance shall certify the amount so determined to the department of natural resources and that department shall each year transfer the amount from the conservation fund to the conservation wardens pension fund until a new certification of the amount to be paid is made by the office of the commissioner of insurance, after which the amount transferred shall be in accordance with the new certification.

**41.41 Pensions not subject to process.**

No portion of the conservation wardens pension fund, either before or after its order of distribution by the board to disabled or superannuated conservation wardens or to the widow or guardian of minor children of such wardens, may be held, seized or taken subject to or detained or levied on by virtue of any attachment, execution, injunction, writ or other order or decree or any process or proceeding whatever, issued out of or by any court of this state for the payment or satisfaction in whole or in part of any debt, damages, claim or judgment against such warden or his widow or the guardian of minor children of any deceased member. Insurance premiums for those annuitants insured under subch. II of ch. 40, however, shall be deducted from the annuity, if the annuity is sufficient, and paid to the credit of s. 20.515 (2) (w).

**41.42 Administrative costs.** Administrative costs determined pursuant to s. 40.01 shall be charged to investment income of the conservation wardens pension fund.

SUBCHAPTER III

OLD STATE RETIREMENT SYSTEM

**41.50 State employes' retirement system.** The investment board shall certify the name, address and amount of the monthly annuity payment for each person eligible to receive an annuity under ss. 42.65 to 42.71, 1957 Stats., and shall also transfer all records relating to the state employes' retirement system. It shall be the responsibility of the investment board to see that all records so transferred are complete, accurate and up to date. The department of employe trust funds shall pay the monthly annuities, as provided by s. 20.515 (2) (b), in accordance with the aforesaid certification of the investment board. Payment shall be made to the designated beneficiary where such designation under the option elected by the annuitant is on file. It is the intent of this section that each annuity which was being paid in ac-

cordance with ss 42.65 to 42.71, 1957 Stats., shall continue to be paid to each person entitled thereto under said statutes.

**41.51 Employees' savings fund, escheat, filing claims.** (1) Any person who shall have moneys in the "employees' savings fund" of the state employees' retirement system in accordance with s. 42.68 (1957 statutes) and shall not have dealt therewith between December 31, 1947 and June 30, 1959, and shall not have asserted any claim to such moneys for said period, shall be presumed, unless it be shown to the contrary, to have died intestate, without heirs, or to have abandoned such moneys.

(2) All of the moneys in the employees' savings fund of the state employees' retirement system credited to the individual accounts of members thereof shall escheat and shall be credited to the common school fund and become a part thereof subject to subs. (3) and (4).

(3) On or before July 20, 1959, the investment board shall certify to the state treasurer the names of all persons who had an account in the employees' savings fund of the state employees' retirement fund and the amount of money therein to the credit of each such person. Upon the receipt of such certification the state treasurer shall forthwith publish a notice in the official state paper stating the names of such persons, the respective amounts to their credit, the fact that said amounts have escheated to the common school fund and the fact that said amounts will be paid to the respective owners thereof or their respective heirs or legatees, without interest, on proof of such ownership, if applied for within 5 years from the date of publication, except that if any such person is an infant or under disability, the period of limitation shall be extended to one year after attaining majority or removal of the disability.

(4) Whenever within said period of 5 years any person or persons shall file a claim therefor and shall furnish proof of ownership of any of the aforesaid amounts which shall have escheated to the common school fund sufficient to

satisfy the state treasurer, secretary of state and attorney general of the correctness of said claim, such claim shall be paid upon the written approval of said 3 state officers.

**41.52 Benefits and allowances not subject to tax, execution, etc.; exceptions.** All benefits and allowances, and every portion thereof, granted under the state employees' retirement system, both before and after payment to any beneficiary or estate, shall be exempt from any state, county or municipal tax, and from attachment or garnishment process, and shall not be seized, taken, detained or levied upon by virtue of any execution, or any process or proceeding or judgment whatsoever issued out of or by any court of this state for the payment in whole or in part of any debt, claim, damage, demand or judgment against any member, annuitant or beneficiary of the state employees' retirement system, and no such member, annuitant or beneficiary shall have any right to assign his benefit or allowance, or any part thereof, provided that:

(1) The department of employe trust funds may retain out of the proper annuity or other benefit such amount as is necessary for the purpose of reimbursing the fund for any money paid to the annuitant, member, beneficiary or estate through misrepresentation, fraud or error.

(2) In all cases in which any amounts become payable to a minor or to a person adjudged insane, or mentally incompetent, the department of employe trust funds may waive guardianship proceedings, and pay such amounts to the person providing for, or caring for, such minor, or to the wife, parent or other person providing for, or caring for, such insane or incompetent person.

**41.53 Transfer of assets to general fund.** Except as provided in s. 41.51, all cash, securities and other assets of the state employees' retirement fund shall be transferred to, and become a part of, the general fund.