

CHAPTER 42

TEACHERS RETIREMENT

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SUBCHAPTER I

STATE TEACHERS RETIREMENT

42.20 Definitions. In this subchapter unless the context otherwise requires:

(1) "Accumulation" means the total resulting from the addition of interest to required deposits, members' deposits, state deposits or additional deposits.

(2) "Board" means the state teachers retirement board.

(4) "Director" means the director of the bureau which is responsible for the administration of the system.

(5) DEPOSITS. (a) "Additional deposit" means any deposit made in the retirement deposit fund under s. 42.40 by or on behalf of a member, excluding required deposits.

(b) "Member's deposit" means any deposit made in the retirement deposit fund by or on behalf of a member, excluding the state deposit.

(c) "Required deposit" means the deduction in accordance with ss. 42.40 and 42.41 (1) from

the compensation received by a teacher deposited in the retirement deposit fund.

(d) "State deposit" means the deposit made by the state or the appropriate employers in the retirement deposit fund on behalf of any member.

(6) "Employer" means this state or any subdivision thereof authorized by law to employ teachers or to pay their salaries.

(7) "Fiscal year" is the year beginning July 1 and ending June 30.

(8) "Interest" means the actual rate earned by deposits.

(10) (a) "Member" means a person who, as the result of having been engaged in Wisconsin teaching, has a credit in the retirement deposit fund or a reserve in the annuity reserve fund, or who is or may be entitled to a present or future benefit under the teachers' insurance and retirement law as provided by s. 42.51.

(b) For the purposes of s. 42.241:

1. "Active member" means a member who is not receiving an annuity under s. 42.242, 42.49 or 42.51 and who has made a required deposit in

the retirement deposit fund based on earnings after June 30, 1956, or is deemed an active member under s. 42.241 (7), or is on a leave of absence from a Wisconsin teaching position.

2. "Inactive member" means a member who is not receiving an annuity under s. 42.242, 42.49 or 42.51, who has not made a required deposit in the retirement deposit fund based on earnings after June 30, 1956, and is not on a leave of absence from a Wisconsin teaching position.

3. "Retired member" means a member who is receiving an annuity under s. 42.242, 42.49 or 42.51.

(c) Each member shall be a member of the separate group or the combined group, upon completion of the procedures under s. 42.241.

(11) "Net interest" means the gross interest earned by deposits less expense of investment and depreciation of principal.

(12) "OASDHI" means federal old-age, survivors, disability and health insurance, as provided under Title II of the federal social security act.

(13) "Prior service" means service rendered as a teacher in the public schools, the state universities or the university, prior to July 8, 1921.

(14) "Public schools" means all schools supported wholly or in part by public funds, and under the control and management of this state, or any subdivision thereof, and state departments performing educational functions, empowered by law to employ teachers, except schools under the control and management of the board of regents of the university of Wisconsin system and except schools in cities of the 1st class included under subch. II of ch. 42.

(15) "School year" means 120 teaching days, or in case of service in this state prior to July 8, 1921, not less than 75% of the then legal school year.

(16) "Senior teacher" designates a teacher who shall have arrived at the 25th birthday anniversary on the first day of July preceding.

(17) "State university" means any university under the control and management of the board of regents of the university of Wisconsin system under ch. 37, 1971 stats.

(18) "Straight life annuity" means an annuity payable monthly to a member for life, as provided under s. 42.49 (2) (a).

(19) "System" means the state teachers retirement system.

(20) "Teacher" means any person legally or officially employed or engaged in teaching as a principal occupation.

(21) (a) "Teaching" includes the exercise of any educational function for compensation, in

any of the public schools, the state universities, or the university, or in any school, college, department or institution, within or without this state, in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity.

(b) Work as a librarian employed by any school board in a library in any school under its jurisdiction, by a person whose qualifications as a librarian are at least equal to the minimum librarian qualifications prescribed by the state superintendent of public instruction, also shall be deemed teaching.

(22) "University" means any college, school or department under the control and management of the board of regents of the university of Wisconsin system under ch. 36, 1971 Stats.

(23) "Variable annuity" means any annuity provided by the accumulations in the variable annuity division established pursuant to s. 42.243; and constitutes a contract involving life contingencies providing for the dollar amount of benefits or other contractual payments or values under said section to vary so as to reflect differences which may arise between the total value of the annuity reserve for variable annuities and the reserve that would be required if such annuities were fixed annuities.

(24) "Wisconsin teaching" means teaching in the public schools, the state universities or the university in this state.

(25) "Year of teaching experience" means a fiscal year during which the teacher was employed as a teacher not less than a full school year.

(26) For the purposes of s. 42.245:

(a) "Final average compensation" means the monthly rate of compensation obtained by dividing 1) the member's total compensation subject to required deposits for the 5 fiscal years in which such compensation was the highest during the fiscal years preceding the June 30 following the date he ceased to be employed as a teacher in Wisconsin teaching by 2) 12 times the number of years of his creditable service for such 5 years. If a member has such compensation for less than 5 such fiscal years his final average compensation is the rate obtained by dividing his total compensation for all such years by 12 times the total number of years of his creditable service therefor.

(b) "Final excess OASDHI compensation" means the monthly rate of compensation obtained by dividing: 1. the member's total compensation for the 5 years or such lesser period determined pursuant to par. (a), in excess of the amounts subject to contributions under subch. VI of ch. 40, by 2. 12 times the number of years of his creditable service for such period, but such

monthly rate shall not exceed the amount by which the final average compensation of the member exceeds \$550.

(c) For any annuity determined in accordance with s. 42.245 (2) (c), "final average compensation" means the monthly rate of compensation obtained by dividing 1) the member's total compensation subject to required deposits for the 3 fiscal years in which such compensation was the highest during the fiscal years preceding the June 30 following the date he ceased to be employed as a teacher in Wisconsin teaching by 2) 12 times the number of years of his creditable service for such 3 years. If a member has such compensation for less than 3 such fiscal years his final average compensation is the rate obtained by dividing his total compensation for all such years by 12 times the total number of years of his creditable service therefor.

History: 1971 c. 100 s. 23; 1971 c. 152 ss 4m, 13; 1971 c. 211, 214; 1973 c. 20, 90; 1973 c. 335 s. 13

Teachers' required deposits paid to retirement funds by the employer on behalf of the teachers are not to be used to determine the final average compensation under (26) (a) or 42.70 (2) (t). 62 Atty. Gen. 221

42.21 Title of subchapter; administration of. This subchapter shall be known as the "State Teachers Retirement Law". The state teachers retirement system shall be administered by the state teachers retirement board.

History: 1973 c. 137

42.22 State teachers retirement board.

(1) The director may act for the board, pursuant to its direction and under such rules as it adopts, in all matters concerning the administration of the state teachers retirement system.

(2) The board shall adopt rules for the transaction of the business of the state teachers retirement system and shall perform all duties necessary or convenient for putting into effect and carrying on the state teachers retirement system.

(4) The board shall use the actuary or actuarial firm or independent contractors retained under s. 40.02 for the purpose of carrying out the necessary actuarial or other contractual service requirements of the system, and employ or select such additional administrative, clerical and other employes as are required for the administration of the system.

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

History: 1971 c. 125; 1977 c. 418.

Note: Chapter 280, laws of 1975, provides in part: "The Wisconsin retirement fund, the state teachers retirement system and the Milwaukee teachers retirement fund are merged into one public employe retirement system to be known as the Wisconsin retirement system. The employe trust funds board

is directed to prepare and submit to the legislature when it convenes in January 1977, a bill to reconcile the statutes with the merger policy declared in this act".

42.223 Teachers' retirement fund. (1)

The moneys paid into the retirement deposit fund as provided in ss. 42.39 to 42.46 and all other money received by it from any legal source, excepting sums legally disbursed from said fund and excepting sums transferred therefrom to the general fund or the annuity reserve fund, shall constitute the retirement deposit fund; the moneys paid into or transferred to the state accumulation fund as provided in ss. 42.245 to 42.46 and all other money received by it from any legal source, excepting sums legally disbursed from said fund and excepting sums transferred therefrom to the annuity reserve fund, shall constitute the state accumulation fund; the moneys legally transferred from the retirement deposit fund and the state accumulation fund to the annuity reserve fund and all other moneys received by said latter fund from any legal source, excepting sums legally disbursed or transferred from said fund, constitute the annuity reserve fund; the money received by said fund, from any legal source, excepting sums legally disbursed therefrom, constitute the contingent fund and are appropriated to the state teachers retirement board for carrying into effect subch. I of ch. 42.

(2) Amounts waived, released or forfeited under any provision of this subchapter shall be credited to the state accumulation fund.

History: 1971 c. 214 s. 2; 1973 c. 137; 1975 c. 189.

42.23 Refunds. The board may refund any money paid in error into any of the funds of the system, including money paid in error by an employer. To effect such a refund the name of each person 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 so certified, and the state treasurer shall pay the same and charge it to the appropriation made by s. 20.515 (1) (u).

History: 1975 c. 39 s. 734

42.24 State treasurer ex officio treasurer of system. The state treasurer shall be ex officio treasurer of the state teachers retirement system.

42.241 System divided; referendum on OASDHI. (1) DIVISION INTO GROUPS. Subject to s. 42.244 the state teachers retirement system is divided into 2 parts known as the separate group and the combined group.

(2) COMBINED GROUP. The combined group shall be composed of:

(a) Members who indicate in accordance with this section that they desire coverage under an agreement under section 218 of Title II of the federal social security act;

(b) Individuals who become members after April 5, 1957;

(c) Inactive and retired members who become active members after said date; and

(d) Persons who become members of the combined group under par. (b) or (c) shall become members of the combined group on or after July 1, 1957.

(3) SEPARATE GROUP. The separate group shall be composed of all other members.

(4) INFORMATION AND FORMS TO BE FURNISHED TO MEMBERS. Not later than April 20, 1957, there shall be mailed or delivered to each person who is an active member on April 5, 1957, information concerning the contributions, benefits and other features of the 2 groups into which the system is divided under this section, together with an envelope addressed to the system, with postage prepaid, and a form to be signed and returned to the office of the system by each member who desires to become a member of the combined group. A member who chooses to become a member of the combined group shall thereby elect to become subject to the laws relating to the combined group, and the form provided under this subsection shall contain a statement to that effect.

(5) EVIDENCE OF MAILING. There shall be certified and filed with the board and the governor a list of the names and addresses of all members to whom the materials specified in sub. (4) are delivered. Upon being filed, the certified list shall constitute prima facie evidence of compliance with sub. (4).

(6) DELIVERY OTHER THAN MAILING. In lieu of mailing the materials specified in sub. (4) to individual members, with the approval of the governor sufficient supplies of such materials may be mailed or delivered to other responsible persons, who shall deliver such materials to members as specified. Such delivery to the individual members may be accomplished personally, by mail, or by means of a regularly constituted institutional or departmental delivery service. A certificate signed by any such person stating that on the dates specified therein he has so delivered such materials to the members named in a list attached to said certificate, when filed with the board, shall constitute prima facie evidence of compliance with sub. (4) with respect to the members named in such list. Delivery may be made under this subsection as to

some members and under sub. (4) as to other members.

(7) ACTIVE STATUS FOR RETIRED MEMBERS. (a) Any retired member who has made required deposits based on earnings during 2 or more calendar quarters after December 31, 1954, shall be deemed an active member if before December 1, 1957, he requests that the annuity he is then receiving be discontinued. Such request shall be made on a form furnished for that purpose by the board, and the board shall also inform such retired members of ss. 42.241 and 42.242.

(b) When a person deemed to be an active member under this subsection becomes a member of the combined group, the reserve held in the annuity reserve fund based on the accumulations from member's deposits and state deposits, and the reserve based on any prior service computation, of such member, shall be transferred to the retirement deposit fund until an annuity is again granted to such member. Such reserve shall be based on the member's attained age when such funds are transferred. An annuity subsequently granted to any such member shall be in the same optional form as the discontinued annuity.

(d) If any member dies after his annuity is discontinued under this subsection and before an annuity is again granted to him, a death benefit shall be paid as provided in s. 42.50. Said death benefit shall be the full amount transferred to the retirement deposit fund under par. (b), reduced by the amounts transferred under sub. (12) as employer and employee OASDHI contributions for retroactive coverage. For purposes of such death benefit a member may file a new designation of beneficiary with the board.

(e) Notwithstanding s. 42.49 (13), 1971 Stats., any retired member who is employed in a position in which he makes required deposits after August 17, 1957, and before the date on which an agreement is executed extending coverage under OASDHI to the members of the combined group under this section and subch. VI of ch. 40, shall be deemed an active member, his annuity shall be discontinued, and the reserve held in the annuity reserve fund based on accumulations from member's and state deposits, and the reserve based on any prior service computation under s. 42.51 or annuity under s. 42.49, of such member, shall be transferred to the retirement deposit fund until an annuity is again granted to such member. Such reserves shall be based on the member's attained age when such funds are transferred. An annuity subsequently granted to any such member shall be in the same optional form as the discontinued annuity.

(f) The reserve based on a prior service computation or an annuity under s. 42.49, which is transferred to the retirement deposit fund under par. (b) or (e), shall for the purposes of s. 42.242 (1) be deemed an accumulation from state deposits.

(8) REDUCTION OF ANNUITY. (ab) The annuity paid from the contingent account of the annuity reserve fund to any member of the separate group who retired after April 30, 1957, who was eligible to make the choice pursuant to sub. (9) and who elects under sub. (12a) to become a member of the combined group, shall be canceled at the end of 6 months after becoming a member of the combined group, except for that portion thereof which is paid under s. 42.51 because of prior service. If any such member shall present to the board satisfactory proof that he is not qualified for either an OASDHI primary or disability benefit that portion of the annuity so canceled shall be reinstated and paid thereafter until he qualifies for such an OASDHI benefit.

(9) MEMBER TO INDICATE CHOICE. Each member to whom the materials are sent under sub. (4) shall indicate whether he desires to be a member of the separate group or the combined group on the form furnished for that purpose, and mail or deliver said form to the office of the system. Such form must be received by the board not later than May 25, 1957. Each such member shall enter on such form the address at which he will receive mail, or from which first class mail will be forwarded to him, during the following 120 days.

(10) CERTIFICATION OF MEMBERSHIP. On or before June 9, 1957, there shall be certified to the governor the names and addresses of the members of the combined group.

(11) REFERENDUM TO BE HELD. When the information required under sub. (10) has been certified to the governor, the governor shall forthwith take all actions necessary for the conduct of a referendum under s. 40.41 (3), so that the members of the combined group may vote in favor of or against coverage under the federal OASDHI system. If a majority of the members of the combined group vote in favor of such coverage this section (1957) shall be fully operative.

(12) OASDHI COVERAGE RETROACTIVE TO JANUARY 1, 1955. Coverage of members of the combined group under OASDHI shall be effective as of January 1, 1955, or the date on which covered earnings were first paid to any such member, if such date is later. The employer contributions to the public employes social security fund in behalf of such members, for covered employment under OASDHI between

January 1, 1955, and the end of the calendar quarter in which the agreement extending such coverage is executed, shall be paid by transferring the amounts necessary to make such payment from the accumulations from state deposits in the account of each such member. The employe contributions for such period shall be paid by transferring the amounts necessary to make such payment from the accumulation from required deposits in the account of each such member. If such accumulations are not sufficient to make such payment the additional amount necessary to make such payment shall be paid from the contingent account of the annuity reserve fund. Such funds shall be transferred under this subsection. For the purposes of this subsection covered earnings are earnings upon which required deposits are based.

(12a) TRANSFERS TO COMBINED GROUP. (a) The position of any employe who is a member of the separate group and who was eligible to make the choice pursuant to sub. (9) may be transferred to the combined group if, prior to the date of execution of any modification to the agreement with the federal department of health, education and welfare made pursuant to s. 40.41 (3) to implement such transfer, the board receives from such member, not less than 20 calendar days prior to the submission of such modification, a written request for such transfer which specifies the school district or other public agency by which such member is then employed, and provided such member occupies a position covered under the state teachers retirement system at that time and on the date of submission of the modification to the federal department of health, education and welfare. Thereupon such member shall be a member of the combined group.

(b) Section 42.241 (8), (12ab) and (15) shall be applicable to such transfers but s. 42.241 (12) shall not be so applicable.

(c) The board shall certify a list of the public agencies to be included in any such modification.

(d) No transfer as provided in this subsection shall be permitted after December 31, 1972.

(12ab) OASDHI COVERAGE RETROACTIVE TO JANUARY 1, 1955. Coverage under OASDHI of a member of the combined group who elects to transfer thereto under sub. (12a) shall be effective as of January 1, 1955, or the date on which covered earnings were first paid to such member, if such date is later. The employer contributions to the public employes social security fund on behalf of such a member for covered employment under OASDHI between January 1, 1955, and the end of the calendar quarter in which the agreement extending such

coverage is submitted to the federal department of health, education and welfare, shall be paid by transferring to said fund the amount which is required to make such payment from the accumulation from state deposits in the account of such member. The employe contributions for such period shall be paid by transferring the amount which is required to make such payment from the accumulation from required deposits in the account of such member. If such accumulations are not sufficient to make such payments and the member is receiving an annuity from the annuity reserve fund, the additional amount required therefor shall be paid from the reserve for such member's annuity in the annuity reserve fund, and such member's annuity shall be reduced proportionately. If such accumulations and the said amount in the annuity reserve fund are not sufficient to make such payments, the additional amount required to make such payments shall be paid from the contingent account of the annuity reserve fund.

(13) NATURE OF CONTRACTUAL RIGHTS UNCHANGED. It is not intended that the enactment of chapter 12, laws of 1957, shall extend or impair the nature of any contractual rights of members of the state teachers retirement system.

(15) FUND INTEGRATION. The board shall take such actions as are necessary to complete the inclusion of the members of the combined group of the state teachers retirement system under the federal OASDHI system as provided in this section. Said board shall also deduct from the respective accounts of participants in the state teachers retirement system, and certify to the department of administration, the amounts to be transferred from the state teachers retirement fund to the public employes social security fund to provide for the contributions which will thereby become payable to the federal OASDHI system as employer and employe contributions for such employes as the result of said integration. If payment of said contributions is not made to the federal OASDHI system before any interest or penalty accrues thereon under federal regulations, the board shall pay such interest or penalty and charge the same to the interest income of the state teachers retirement system.

History: 1971 c. 214; 1973 c. 20, 243.

42.242 Benefits under the combined group. This section shall apply only to members of the combined group.

(1) RETIREMENT ANNUITIES. (a) When a member of the combined group has ceased to be employed as a teacher in the public schools, state universities or university in this state, and is not on leave of absence from a teaching position in

the public schools, state universities or university in this state, the accumulation from the member's required deposits, additional deposits or state deposits may be applied by the member as a net single premium at the rate certified by the board, to the purchase of an annuity or annuities. A member may elect to receive an annuity or annuities from member's required deposits in one form and an annuity or annuities from state deposits in another form. He may elect to receive his additional deposits in a lump sum or in the form of an annuity or annuities. Small amounts remaining in the retirement deposit fund to the credit of a member which may have been omitted in the purchase of an annuity or annuities may, at the discretion of the board, be paid to the member in a single payment in lieu of an adjustment to the annuity or annuities purchased under this subsection.

(b) The first payment of an annuity under this section shall not be made before the 50th birthday anniversary of the member unless he has qualified for a disability annuity under sub. (4) or s. 42.49 (9).

(2) OPTIONAL INTEGRATED ANNUITY. (a) Any member of the combined group who is eligible to receive a retirement annuity under this section, which annuity is to begin before the member reaches the age of eligibility for an OASDHI retirement benefit, and who has sufficient quarters of OASDHI coverage to qualify for an OASDHI benefit upon reaching the age of eligibility therefor, may with the approval of the board elect in lieu of such annuity to take the actuarial equivalent thereof as:

1. A reduced annuity payable monthly for life; and

2. A temporary annuity payable monthly and terminating at death or with the payment due in the month in which the participant attains the age specified in the application for such annuity.

(b) The purpose of this option is to provide a life annuity and temporary annuity in such amounts that the member's total anticipated retirement benefits from the state teachers retirement system and primary OASDHI will be approximately the same both before and after attainment of the age of eligibility for an OASDHI retirement benefit, assuming that the member has no further wages credited to his account under OASDHI after payment of such annuity begins.

(2a) BENEFICIARY OPTIONAL INTEGRATED ANNUITY. (a) The beneficiary of any member of the combined group may with respect to an annuity payable under s. 42.50 which annuity is to begin prior to the beneficiary's 62nd birthday, elect to take the actuarial equivalent thereof as:

1. A reduced annuity payable monthly for life; and

2. A temporary annuity payable monthly and terminating at death or, with the payment due in the month in which the beneficiary attains age 62 whichever occurs earlier.

(b) 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 amounts that the beneficiary's total anticipated monthly retirement benefits from this system and survivor benefits from the federal OASDHI system will be the same both before and after attainment of age 62.

(c) The annuity payable under par. (a) 1 may at the option of the beneficiary be granted in any optional form permitted under s. 42.50.

(3) INCREASED ANNUITIES. (a) The annuity of any member of the combined group who before April 5, 1957, was a member as defined in s. 42.20 (10) (a), when computed as a straight life annuity, shall be increased by an amount sufficient so that such annuity, when added to the OASDHI primary or disability benefit for which the member is or may be eligible as of the date payment of such annuity is to begin, is equal to:

1. The total annuity, when computed as a straight life annuity, for which such member would have been eligible under s. 42.49 (4), (5), (6) and (7) if he had remained a member of the separate group excluding any portion of such annuity based on additional deposits; plus

2. For a member who, upon the date payment of such annuity is to begin, has attained the age of 60 years, an amount equal to 5% of the amount computed under subd. 1; plus

3. Three-fourths of one per cent of the amount computed under subd. 1 for each full 3-month period by which the attained age of the member, upon the date payment of such annuity is to begin, exceeds 60 years, excluding any period beyond the 65th birthday anniversary of the member.

(b) 1. In computing the amount of the primary OASDHI benefit for which a member is or may be eligible the actual amount of such benefit, according to the best available information, shall be used if the member has attained the age of 65 years or more. If the member is under 65 years of age the amount used in making such computation shall be based on the actuarial equivalent value, for the sex and then attained age of the member, of the estimated OASDHI benefit which will be payable at age 65 according to the best available information. In all such cases it will be assumed that the OASDHI benefit formula will remain unchanged and that the member will have no further wages credited to his account under OASDHI after payment of such annuity begins.

2. If the OASDHI benefit actually received is different from the estimated OASDHI benefit, except as the result of a change in the OASDHI benefit formula or the earning of additional covered wages by the member, the increased annuity will be adjusted up or down as to future payments in order to compensate for such difference to the extent practicable. No such adjustments shall be made which would require a change of less than \$2 per month in the annuity being received by any member. This subdivision does not apply in the case of an annuity under sub. (2).

(c) For purposes of computing additional annuities under this subsection, OASDHI benefits taken into account shall be based on the OASDHI benefit formulas in effect on April 5, 1957. To the extent that the OASDHI benefit formulas are changed thereafter the combined benefits under the subsection shall be changed accordingly.

(d) If any such member does not qualify for an OASDHI primary or disability benefit his annuity shall be increased by an amount such that said annuity, when computed as a straight life annuity, is equal to the total annuity for which such member would have been eligible under s. 42.49 (4), (5), (6) and (7) if he had remained a member of the separate group, excluding any portion of such annuity based on additional deposits. An annuity under this paragraph shall cease if such member subsequently qualifies for an OASDHI primary or disability benefit either wholly or partially as a result of OASDHI coverage as a teacher in the public schools of this state, and such member may then receive an annuity for which he qualifies otherwise; provided that said annuity for which the member qualifies otherwise shall be increased by an amount such that, when added to the OASDHI primary or disability benefit of such member, the total shall equal the annuity for which such member would have been eligible under s. 42.49 (4), (5), (6) and (7) if he had remained a member of the separate group.

(e) When an annuity is increased under this subsection, the increase in the annuity shall be paid from the contingent account of the annuity reserve fund.

(f) An annuity under this subsection may, at the option of the member, be in any of the forms provided in s. 42.49 (2) (a) to (d), on an actuarial equivalent basis. Section 42.49 (8) shall not apply to annuities under this subsection.

(g) In computing the total annuity for which a member would have been entitled under s. 42.49 (4), (5), (6) and (7) if he had remained a member of the separate group, as provided for in pars. (a) and (d), in those cases only where

the annuity would have been increased in accordance with s. 42.49 (4), (6) (b) or (7), that part of such total annuity which is based on accumulations from required deposits shall be based on the actual accumulations from required deposits and not the accumulations from required deposits which would have resulted if the member had remained a member of the separate group.

(4) DISABILITY ANNUITIES. (a) If, before attaining age 55, a member who has made required deposits for not less than a school year during each of 5 fiscal years and who was employed in teaching or was on leave of absence from teaching in this state, within the 12-month period immediately preceding the occurrence of disability, becomes unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, and furnishes due proof thereof and that such disability has then existed for 60 days, the member shall be paid from the contingent account of the annuity reserve fund an annuity during the continuance of such disability, in monthly payments of \$100 each, in addition to any other benefit payable to such member. The board may at any time not more than once in any year require proof of the continuance of such disability and if the member fails to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in any substantial gainful activity, such annuity shall cease.

(b) If a member receiving a disability annuity under par. (a) becomes eligible to receive an OASDHI disability or primary retirement benefit the amount of such annuity paid from the contingent account of the annuity reserve fund shall be reduced by the amount of such OASDHI benefit. If any such member fails to apply for an OASDHI benefit upon reaching the age of eligibility therefor, or fails to pursue any such application in good faith, the portion of such annuity paid from the contingent account of the annuity reserve fund shall cease.

(c) Each initial determination of disability under this subsection shall be made by the state agency designated to make determinations of disability by agreement with and for the secretary of health, education and welfare under the federal social security laws. Such initial determination may be accepted or rejected by the board. Continued eligibility for benefits under this subsection shall be determined in the same manner. As a condition of continued payment of the portion of the annuity paid from the contingent fund, the board may require a member

receiving a disability annuity under this subsection to reapply for an OASDHI disability benefit on the basis of any examination or determination under this subsection, or to apply for the freezing of his OASDHI earning record on the basis of his disability.

(d) A member may not receive an annuity under this subsection and s. 42.49 (9) at the same time.

(e) Payments to members who qualify for the disability annuity under par. (a) shall begin on or after January 1, 1958.

(5) SEPARATION BENEFITS. Any member who has ceased to be employed as a teacher in the public schools, state universities or university in this state, and is not on leave of absence from a teaching position in the public schools, state universities or university in this state, may be paid the accumulation from the member's deposits made while a member of the combined group based on teaching service performed after June 30, 1957, on filing with the board before the 50th birthday anniversary of such member a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of such member to state deposit accumulations based on teaching service performed after June 30, 1957. Withdrawal of accumulations from member's deposits made before said member became a member of the combined group shall be governed by s. 42.49.

(7) LUMP SUM PAYMENT OF DEPOSITS. Any member, who has attained the age of 55 years, has ceased to be employed as a teacher in Wisconsin teaching and is not on authorized leave of absence from a teaching position in Wisconsin teaching, and whose total accumulation from required deposits, state deposits and annuity payments withheld, including accumulations under s. 42.243 would provide an annuity in the normal form of less than \$25 monthly, may be paid such accumulation in a single payment upon filing an application therefor in such form as the board requires. The accumulation from additional deposits shall be paid at the same time.

(8) INFORMATION ON OASDHI BENEFITS. Each member may be required by the board, as a condition of receiving benefits under sub. (3) or (4), to authorize the social security administration to provide the state teachers retirement system with information regarding the present or future OASDHI benefits payable or to become payable to such member.

(9) ANNUITY OPTIONS. An annuity under sub. (1), (2) (a) 1 or (3) may at the option of the member be granted in any of the optional forms set forth in s. 42.49 (2) (a) to (e).

History: 1971 c. 214; 1973 c. 20; 1975 c. 94.

42.243 Variable annuities. (1) ESTABLISHMENT. (a) *Purpose.* The purpose of this section is to establish a well balanced, broadly diversified investment program so as to provide retirement benefits which will fluctuate as the value and earnings of such investments vary, in relation to changes in the general economy. It is anticipated that greater utilization of equity investments will result in the accumulation of larger deposit reserves during the working years of the member and tend to preserve the purchasing power of the deposits made and the benefits provided, and should provide better protection in periods of inflation.

(b) *Fixed and variable annuity divisions.* There are created within the combined group of the state teachers retirement system 2 divisions known as the variable annuity division and the fixed annuity division.

(c) *Combined group.* The term "combined group", as used in this section means the combined group established under s. 42.241.

(2) DEPOSITS. (a) Each member of the combined group, or any prospective member of such group who has signed a contract or accepted an appointment to teach for the ensuing school year, may elect, by written notice filed with the board upon a form furnished by the board, to have 50% of his required deposits and state deposits paid into the retirement deposit fund of the variable annuity division and reserved for the purchase of a variable annuity.

(b) Said election may be made at any time and shall become effective as to deposits based on earnings after the following June 30 unless the board adopts rules which permit an election to become effective earlier.

(c) Said election shall constitute a complete waiver and forfeiture of any right of the member to any benefit under s. 42.242 (3) or s. 42.49 (4), (6) and (7).

(d) Said election, once made, is irrevocable but any election filed during a period of membership which was terminated shall not continue to be effective if the person again becomes a member.

(e) In the absence of such election the member shall participate in the fixed annuity division only, and his entire required deposit shall be paid into the retirement deposit fund of the fixed annuity division.

(f) Any member of the combined group who has elected under par. (a) to participate in the variable annuity division may also direct, upon a form furnished by the board, that any or all additional deposits subsequently made by or on behalf of said teacher be paid into the retirement deposit fund of the variable annuity division, but the maximum amount of such additional deposits paid into such fund shall be \$5,000 per year.

(g) Any member of the separate group may direct, upon a form furnished by the board, that any or all additional deposits subsequently made by or on behalf of said member be paid into the retirement deposit fund of the variable annuity division, but the maximum amount of such additional deposits paid into such fund shall be \$5,000 per year. Benefits available from additional deposit accumulations for members of the combined group shall also be available to members of the separate group. Subsection (3) shall not apply to members of the separate group.

(3) TRANSFER OF ACCUMULATIONS. Each person who, on January 1, 1958, has a deposit in the retirement deposit fund, and subsequently becomes a participant in the variable annuity division, may elect in writing upon a form furnished by the board, that 10% per year, for not to exceed 5 years, of his accumulation in the retirement deposit fund, as of the date he becomes a participant in the variable annuity division, be transferred from the retirement deposit fund of the fixed annuity division to the retirement deposit fund of the variable annuity division. The first transfer shall be made on July 1 following such election, or earlier at the discretion of the board. No election may be made under this subsection after June 30, 1974, except that if at the time of retirement the transfers as elected under this subsection prior to June 30, 1974, have not been completed, another transfer equal to one annual transfer may be made at the election of the member. No such transfers shall be made after the commencement of a retirement annuity.

(4) FUNDS. (a) The board shall at all times maintain in the funds of the fixed annuity division assets in accordance with s. 42.33 (1).

(b) The board shall at all times maintain in the funds of the variable annuity division an annuity reserve fund and a retirement deposit fund:

1. The annuity reserve fund shall consist of all transfers made to the annuity reserve fund less payments from the fund--the total adjusted for net gains and losses and for mortality gains and losses. The annuities paid from this fund shall be adjusted annually so that the value of the total required reserve for these annuities, if they were considered as fixed annuities, would, under the mortality and interest assumptions then in effect, be within 2% of the amount of this fund.

2. Except as otherwise provided in ss. 42.245 (7) (d) and 42.33 (1) (d), the retirement deposit fund shall consist of the deposits made by or for members less withdrawals and transfers from the fund--the total adjusted for net gains and losses.

(c) The board shall establish and maintain such reserve or surplus funds in the fixed annuity division and in the variable annuity division as the interests of the members and the future solvency of the funds may require. The board shall, as of June 30 of each year, make such valuations of the several funds as are necessary for the purposes of the state teachers retirement system.

(f) The assets in the retirement deposit fund and the annuity reserve fund of the variable annuity division shall be evaluated annually by the board at a date fixed by the rules of said board. The market value of investments used in this evaluation shall be the value certified by the investment board. The board may make additional evaluations of the fund at times between the annual evaluations if deemed desirable.

(5) EARNINGS--APPORTIONMENT AND CREDITING. (a) *Earnings.* The earnings of the funds of the variable annuity division shall consist of that portion of the net gains or losses which is due to such items as dividends, rents, interest payments and other income derived from investments rather than from changes in capital value of investments.

(b) *Apportionment.* As of June 30 of each year the board shall determine the earnings of the several funds of the variable annuity division.

(c) *Crediting.* Earnings will be credited to individual accounts in the retirement deposit fund only when a member's deposit accumulation, or state deposit accumulation, or both, are to be paid out in a single sum as a death benefit pursuant to s. 42.50, or are transferred to the annuity reserve fund pursuant to s. 42.48. In such instances interest shall be credited to the amount to be so paid out or transferred for each 3-month period which has elapsed since the preceding June 30 at one-fourth of the rate at which earnings were calculated on such June 30. The interest so credited shall be charged to the earnings for the current fiscal year and shall be paid out or transferred with the amount to which it was so credited. Earnings credited pursuant to this paragraph shall be excluded from the determination of the excess or deficiency resulting from participation in the variable annuity division as required by s. 42.245 (2) (b) 1 or (d) 4.

(6) NET GAINS AND LOSSES. (a) *Determination.* Net gains or losses for any period shall be the amount received from the distribution under s. 40.06 (3) during the period.

(b) *Apportionment.* As of June 30 of each year the board shall determine the net gains or losses to be apportioned to the several funds.

(c) *Crediting to accounts.* Net gains and losses will be credited to the individual accounts in the retirement deposit fund only on amounts

that have been on deposit for the full year except that:

1. Where transfers from the fixed annuity division have been elected pursuant to sub. (3), such gains and losses may be credited on the basis of full quarters that such transferred funds have been on deposit at the rate of one-quarter of the current year's net gains and losses.

2. The board may, in order to avoid substantial inequities in case of extraordinary gains or losses, allocate a portion of these to deposits or transfers made during the current year.

(7) BENEFITS. (a) *Board to fix annuities.* The board shall make such investigations of the mortality, disability, service and compensation experience of the several funds as shall be necessary. On the basis of such investigation the board shall determine, adopt and certify the rates at which the beginning payments on variable annuities shall be made. The rates last adopted by the board shall continue to be the prevailing rates until changed by action of the board.

(b) *Adjustment of variable annuity payments.* Whenever the balance in the annuity reserve fund of the variable annuity division, as of June 30 of any year, exceeds or is less than the then present value of all variable annuities in force, determined in accordance with the rate of interest and approved actuarial tables then in effect, by at least 2% of said present value, the amount of each variable annuity payment shall be proportionately increased or decreased effective on a date determined by the board.

(c) *Interim adjustments.* The board may, in order to avoid substantial inequities, in the event of extraordinary fluctuation in the market value of the investments, make a determination and adjustment of annuities as provided in par. (b) at times other than June 30.

(e) *Separation benefits.* Any member who has ceased to be employed as a teacher in the public schools, state universities or university in this state, and is not on leave of absence from a teaching position in the public schools, state universities or university in this state, may be paid the accumulation from the member's deposits made in or transferred to the variable annuity division, on filing with the board before the 50th birthday anniversary of such member a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of such member to state deposit accumulations which accrued in the variable annuity division as the result of state deposits made in or transferred to the variable annuity division while he was a participant therein. Withdrawal of accumulations from member's deposits in the fixed annuity division shall be governed by s. 42.242 (5).

(f) *Other rights.* Other rights and benefits shall be as nearly consistent with ss. 42.242, 42.49 and 42.50 as the board determines to be practicable considering the nature of the benefits under the variable annuity division.

(g) *Annuities.* When a member has ceased to be employed as a teacher in the public schools or university of Wisconsin system, and is not on leave of absence from a teaching position in the public schools or university of Wisconsin system, the accumulation from the member's required deposits or state deposits may be applied by the member as a net single premium at the rate certified for beginning payments by the board, to the purchase of a variable annuity in any of the optional forms set forth in s. 42.49 (2) (a) to (e).

6. The first payment of an annuity under this paragraph shall not be made before the 50th birthday anniversary of the member unless he has qualified for a disability annuity under s. 42.242 (4), 42.245 (3) or 42.49 (9).

7. Small amounts remaining in the retirement deposit fund to the credit of a member which may have been omitted in the purchase of an annuity or annuities may, at the discretion of the board, be paid to the member in a single payment in lieu of an adjustment to the annuity or annuities purchased under this paragraph.

8. A member may elect to receive the accumulation from his additional deposits in the form of an annuity as provided in this paragraph or in a lump sum.

History: 1971 c. 125, 214, 293; 1973 c. 20, 137, 336; 1975 c. 189.

42.244 Creation of formula group; election by members. (1) There is created as of September 11, 1965, as a part of the system a formula group, to be composed of: (a) Any combined group or separate group member, except any member who on September 11, 1965, is a member receiving an annuity or a member whose annuity is being withheld pursuant to s. 42.242 (6) or 42.49 (13), 1965 stats., who at any time on and after September 11, 1965, but prior to December 1, 1965, is employed as a teacher in Wisconsin teaching and makes a required deposit pursuant to s. 42.40, and who elects in accordance with this section to become a member of the formula group; (b) any combined group or separate group member who on September 11, 1965, is on authorized leave of absence, and who elects in accordance with this section to become a member of the formula group, but no such election shall be effective unless and until such member resumes employment as a teacher in Wisconsin teaching concurrently with the termination of such leave of absence; (c) any member who is a member of

the system on September 11, 1965, but who is not eligible for an election under (a) or (b), who prior to July 1, 1966, or, who within 90 days from the last day of the month in which he is first employed as a teacher in Wisconsin teaching after September 11, 1965, elects in accordance with this section to become a member of the formula group, but his participation as a member of the formula group shall not include or relate to any benefit, compensation or employment for any period prior to July 1, 1966; and (d) any person who becomes a member of the system after November 30, 1965. For purposes of subch. VI of ch. 40 each member of the formula group shall also be classified as a member of the combined group or of the separate group, as determined pursuant to s. 42.241; such classification shall also be applicable with respect to any benefit, compensation or employment which is not includable for formula group purposes.

(2) Not later than January 1, 1966, the board shall mail or deliver to each member who is eligible for the election specified in sub. (1) (a) or (b), comparative information concerning the required deposits, benefits and other features applicable to members of the formula group and to members of the group to which such member then belongs, together with an envelope addressed to the system and a form to be signed and returned to the office of the system by each member who desires to become a member of the formula group. A member who elects to become a member of the formula group shall thereby become subject to the laws relating to the formula group, and such election shall constitute a modification of the employment contract of such member, and the form provided herein shall contain a statement to such effect. To be effective, the election form from any member must be received by the office of the state teachers retirement system no later than the close of business on April 1, 1966, but the board may provide for a reasonable extension of such date in individual cases on the basis of unusual or extenuating circumstances; no such extension shall be effective after June 30, 1967. The board may prescribe and take all actions necessary to assure compliance with the expressed intent of this subsection, which is to assure all eligible members an opportunity to make an informed election of membership in the formula group.

(3) Participation in the formula group shall not be effective, as to any member who becomes a member of such group, before July 1, 1966, or the beginning date of his retirement annuity under s. 42.245 if earlier.

(4) (a) Beginning on May 11, 1973 the formula group shall include every member who on or after such date is employed as a teacher in Wisconsin teaching and who makes a required deposit pursuant to s. 42.40. For purposes of subch. VI of ch. 40, each member of the formula group shall also be classified as a member of the combined group or of the separate group as determined pursuant to s. 42.241.

(b) For any combined group member who becomes a member of the formula group on or after May 11, 1973, any formula annuity, disability annuity under s. 42.245 (3) or death benefit under s. 42.50 (4) shall be reduced by the amount of annuity or other benefit that could be provided by the aggregate of the following amounts, together with interest thereon compounded at the rate of interest credited to member fixed division accounts for each full fiscal year between June 30, 1973, and the effective date of such annuity or other benefit.

1. For the fiscal year ending June 30, 1967, 2.5% of the amount of compensation for such year which is in excess of \$6,600.

2. For the fiscal year ending June 30, 1968, 2.5% of the amount of compensation for such fiscal year which is in excess of \$7,200.

3. For the fiscal years ending June 30, 1969, to June 30, 1971, 2.5% of the amount of compensation for each of such fiscal years which is in excess of \$7,800.

4. For the fiscal year ending June 30, 1972, 2.5% of the amount of compensation for such fiscal year which is in excess of \$8,400.

5. For the fiscal year ending June 30, 1973, 2.5% of the amount of compensation for such fiscal year which is in excess of \$9,900.

(c) Subsection (1) (c) shall not apply to any member who qualifies under par. (a), but any such member shall be subject to par. (b) as to any full fiscal year during which he was a member of the combined group.

History: 1973 c. 20.

42.245 Benefits under the formula group.

This section shall apply only to members of the formula group. Benefits provided under or pursuant to this section are inclusive of the benefits provided by accumulations under s. 42.243.

(1) CREDITABLE SERVICE. (a) Creditable service shall be expressed in years and such fractions thereof as the board determines. The creditable service of each member at any time prior to July 1, 1966, shall be the number of years of service as a teacher in Wisconsin teaching (including prior service) theretofore creditable to him pursuant to the applicable statutes and rules, provided that military service meeting

the requirements of s. 42.45 (3) shall be included for any such period for which the member makes deposits as provided by s. 42.45 (4). The creditable service of a member with respect to teaching after June 30, 1966, shall be the number of years of subsequent service as a teacher in Wisconsin teaching until such service as a teacher is terminated. The board shall fix and determine by proper rules and regulations how much teaching in any year is equivalent to one year of creditable service.

(b) A period of service as a teacher in Wisconsin teaching shall be deemed to have ended each time a member has been granted an annuity or separation benefit. Such member shall be considered a new member upon resumption of teaching following the granting of an annuity or separation benefit.

(c) Creditable service for Wisconsin teaching prior to September 11, 1965 shall be reduced by one-half of any period included therein with respect to which the required deposits of a member have been withdrawn, unless repayment of any such withdrawal has been made prior to July 1, 1966, pursuant to any applicable law. Nothing in this paragraph shall be construed to reinstate any rights waived in connection with the payment of a withdrawal or separation benefit.

(1a) MILITARY CREDIT. Creditable service for active service in the U.S. armed forces after June 30, 1966, shall be granted as provided in s. 40.80, determined and credited as follows:

(a) Creditable service shall be credited as of the date of return to employment in accordance with s. 40.80 (1) (c).

(b) Any member who is not a formula group member shall receive, upon filing an application for a retirement or disability annuity, in lieu of creditable service, state deposit credits in an amount equal to the present value of the formula annuity which would be provided if such creditable service had been applied to the computation of a formula annuity.

(2) RETIREMENT ANNUITIES. (a) When a member of the formula group has ceased to be employed as a teacher in Wisconsin teaching and is not on authorized leave of absence from a teaching position in Wisconsin teaching, he may elect to receive a retirement annuity or annuities, the first payment of which shall not be made before the 55th birthday of the member unless he has qualified for a disability benefit under s. 42.49 (9).

(b) The retirement annuity in the normal form of a formula group member, except as provided in pars. (c) and (d) or in s. 42.244 (4) (b), shall be in the monthly amount equal to the sum of the amounts determined pursuant to this paragraph, plus any benefit elected by such

member to be provided by his accumulated additional deposits:

1. The annuity purchased by applying as a net single premium the amount equal to 200% of the excess, if any, of a. the accumulation from the required deposits of the member over b. the accumulation therefrom which would have resulted if the accumulation therefrom in the variable annuity division on June 30, 1966, had been transferred to, and all subsequent deposits had been made in, the fixed annuity division. If a. is less than b., the annuity of the member shall be reduced by the amount which could be purchased by 200% of the amount of the deficiency.

2. a. If the annuity begins on or after the 65th birthday of the member, the monthly annuity in the normal form determined by multiplying the number of years of his creditable service by the sum of six-sevenths of one per cent of his final average compensation and three-sevenths of one per cent of the final excess OASDHI compensation of the member; or

b. If the annuity begins prior to the 65th birthday of the member, the annuity determined pursuant to subd. 2. a but reduced as recommended by the actuary and approved by the board by a percentage of the amount thereof for each month or major portion thereof between the beginning date of his annuity and the date of his 65th birthday.

c. The initial amount of annuity in the normal form under this subdivision 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 federal OASDHI program, equals 75% of the member's final average compensation. If a member 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 member fails to establish the amount of, or his eligibility for, such OASDHI benefits, determinations thereof shall be made by the board on such basis as the board, by rule, establishes.

(bm) An employer may elect that the date used for determining amounts under par. (b) 2. a and b shall be the 62nd birthday of the member, rather than the 65th birthday of the member, for its employees voluntarily applying for a retirement annuity prior to January 1, 1983, for the purpose of calculating that annuity only, except:

1. This paragraph shall apply only to employees who voluntarily terminate their employment after the date on which the employer elects

under this paragraph and prior to January 1, 1983.

2. Any action under this paragraph for state employes shall be taken in accord with s. 111.92 or 230.12.

3. Any action under this paragraph by a school district for teachers who are represented by a labor organization shall be taken pursuant to a collective bargaining agreement.

4. This paragraph does not prohibit making election under this paragraph a subject of collective bargaining.

5. The employer shall pay to the department of employe trust funds the difference, as determined by the department, between the actuarial cost of the annuity which would have been paid if the employer had not elected under this paragraph and the actual cost of the annuity payable. The amount payable shall be paid to the department in 3 equal annual payments, plus interest at the effective rate. Each annual payment shall be due and shall be included with the first payment made under s. 42.46 in each fiscal year after the annuity effective date. The amount so paid shall be credited as employer normal current service contributions.

(c) The retirement annuity in the normal form of a formula group member, except as provided in pars. (b) and (d) or in s. 42.244 (4) (b), who on or after May 11, 1973 is employed as a teacher in Wisconsin teaching and who makes a required deposit pursuant to s. 42.40 shall be in the monthly amount equal to the sum of the amounts determined pursuant to par. (b), except that:

1. The amount determined under par. (b) 2. a shall be determined by multiplying the number of years of creditable service by 1.3% of the member's final average compensation.

2. The 75% limitation on combined formula annuity and OASDHI benefits in par. (b) 2. c shall be increased to 80%.

(d) The retirement annuity in the normal form of a formula group member shall be the amount determined pursuant to par. (b), (c) if eligible therefor, or this paragraph, whichever results in the largest initial annuity. The annuity under this paragraph shall be the annuity purchased by applying as a net single premium any one or more of the following, plus any benefit elected by a member to be provided by his accumulated additional deposits:

1. The accumulation from the member's required deposits.

2. The accumulation on June 30, 1966, from state deposits made on behalf of a member, compounded to the end of the last completed calendar quarter year at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year.

3. An amount equal to the accumulation from a member's required deposits for teaching service in Wisconsin teaching in each fiscal year after June 30, 1966, compounded to the end of the last completed calendar quarter year at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year.

4. An amount equal to the excess, if any, of a) the accumulation from the required deposits of the member over b) the accumulation therefrom which would have resulted if the accumulation therefrom in the variable annuity division at June 30, 1966, had been transferred to, and all subsequent deposits had been made in, the fixed annuity division. If a) is less than b), the accumulation under either subd. 2 or 3 shall be reduced by the amount of such deficiency.

(e) The normal form of retirement annuity is an annuity payable monthly during life, with a guaranty of at least 60 monthly payments. A member may elect to receive in lieu of the normal form of annuity an actuarially equivalent annuity in any of the optional forms set forth in s. 42.49 (2) (a) to (e). A member may elect to receive an annuity or annuities from his required deposits in one form and an annuity or annuities from the state contribution in another form. A member may elect to receive his additional deposits in the fixed annuity division in a lump sum or in the form of an annuity. A member may elect to receive his additional deposits in the variable annuity division in a lump sum or in the form of an annuity. The excess of the total annuity to which a member is entitled under this section over the initial amount of the variable annuity provided hereunder, when both are computed in the normal form, will be the annuity payable from the fixed annuity division.

(f) Two annuities shall be deemed to be actuarially equivalent if both require the same net single premium at the date as of which the determination is made.

(g) This section shall be effective with respect to any retirement annuity provided herein if application therefor is filed after September 11, 1965 and if the beginning date of such annuity is after such date, but until July 1, 1966, each such retirement annuity shall be determined and paid as provided by the law in effect as to any member prior to September 11, 1965. As soon as possible after July 1, 1966, each such retirement annuity shall be increased to the amount determined pursuant to this section, subject to the same optional modification, if any, as was applied to the original retirement 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 member.

(h) Notwithstanding s. 42.244, an election to become a member of the formula group may be made at any time prior to July 1, 1966, by any member who made a required deposit pursuant to s. 42.40 based on teaching service in the month of May or June, 1965, who was not eligible to make an election to participate in the formula group pursuant to s. 42.244 (1) (a), (b) or (c) or who did not become a member of the formula group pursuant to s. 42.244 (1) (d), and who had not received an annuity at any time prior to May 1, 1965. Any member so electing shall be subject to all provisions applicable to members of the formula group, including the right to have his retirement annuity adjusted in accordance with par. (g), any provision thereof to the contrary notwithstanding.

(i) If the formula group retirement annuity of a member of the combined group who became a member of the formula group on or before May 11, 1973 is less than the amount to which such member would have been entitled under s. 42.242, the formula group retirement annuity shall be increased to such amount.

(3) **DISABILITY ANNUITIES.** (a) If, before attaining age 65, a formula group member who has made required deposits for not less than a school year during each of 5 fiscal years within the 84-month period preceding the occurrence of disability, becomes unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, and furnishes due proof thereof, and if the teaching service of the member was terminated because of such disability, such member shall be paid a disability annuity during the continuance of such disability. The teaching service of a member shall not be considered to have been terminated because of disability if a member has engaged in any employment other than Wisconsin teaching between the date the disability occurred and the date of approval by the board of his application for a disability annuity. The board may at any time, but not more than once in any fiscal year, and only until the member has attained age 65, require proof of the continuance of such disability, and if the member fails to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in any substantial gainful activity, such annuity shall be reduced to the amount of the retirement annuity to which he would be entitled under sub. (2), notwithstanding the age 55 requirement expressed therein.

(b) The amount of a disability annuity under this subsection shall be the greater of the following:

1. The amount of the retirement annuity to which the member would be entitled under sub. (2), notwithstanding the age 55 requirement expressed therein, or,

2. The lesser of the following amounts: 50% of the final average compensation, or 1.3% of the final average compensation multiplied by the number of years of creditable service, including in the latter assumed service between the date the disability occurred and the 65th birthday of the member. Any annuity payable under this paragraph shall not be subject to optional modification. All available required deposit accumulations, state deposit accumulations and state contributions shall be applied to the cost of any annuity provided under this paragraph.

3. In addition to a disability annuity a member may elect to receive his additional deposits in the fixed annuity division in a lump sum or in the form of an annuity in any of the optional forms set forth in s. 42.49 (2) (a) to (e) and a member may also elect to receive his additional deposits in the variable annuity division in a lump sum or in the form of an annuity in any of the optional forms set forth in s. 42.243 (7) (g).

(c) Each initial determination of disability under this subsection shall be made by the state agency designated to make determinations of disability by agreement with and for the secretary of health, education and welfare under the federal social security laws. Such initial determination may be accepted or rejected by the board. Continued eligibility for benefits under this subsection shall be determined in the same manner.

(d) This subsection shall not be effective as to any disability which occurred prior to July 1, 1966. Payment of a disability annuity under this subsection shall be effective as of the first day of the month following the month in which the disability occurred, as determined by the board, but no payment shall be made for any period more than 60 days prior to the receipt by the board of a written application, on a form prescribed by the board, for such disability annuity. Such application shall be completed by the member or, if the member is incapacitated, by any person on behalf of the member.

(e) If an application for a disability annuity under this subsection is disapproved, the filing date of such application may be used as the filing date of a subsequent application for a retirement annuity, but only if the use of such date would prevent the loss of benefits.

(4) SEPARATION BENEFITS. Any formula group member who has ceased to be employed as

a teacher in Wisconsin teaching and who is not on authorized leave of absence from a teaching position in Wisconsin teaching, shall be paid the accumulation from the member's required and additional deposits upon filing with the board, before the 55th birthday of the member, a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of the member to state deposit accumulations and to any benefit arising under this subchapter.

(5) REENTRY INTO SERVICE. (a) If any member receiving a retirement annuity receives compensation which would be subject to s. 42.40 (6a) if he were not an annuitant, his annuity shall be terminated as of the end of the month prior to the date on which the total of such compensation received in any fiscal year exceeds 6 times his average monthly earnings for the 3 fiscal years in which his earnings were the highest. For purposes of this subsection, compensation is considered received as of the date on which such compensation would be paid normally.

(b) Upon termination of an annuity in accordance with par. (a), each member whose annuity is so terminated shall be credited, as of the date such annuity is terminated, with additional deposits, required deposits and state deposits equal to the then present value of the portion of the terminated annuity which was originally provided by the corresponding type of deposit. All such amounts remaining in a member's account at the end of the fiscal year in which credited shall be credited with interest or variable gains or losses for each full month elapsing between the date of credit and the end of the fiscal year, at one-twelfth of the applicable rate for such fiscal year.

(c) Upon subsequent retirement, the annuity of a former annuitant shall be recomputed under sub. (2) and applicable provisions, but the annuitant shall be required to accept the same optional form of annuity as that under which he initially retired. If such annuity is one providing a survivor life contingency the same beneficiary must be designated, but this sentence shall not apply if the creditable service of the member for employment after his reentry into service exceeds his creditable service for previous employment. Upon such recomputation, the amount of any annuity determined pursuant to sub. (2) (b) 2 shall be reduced by the amount of the annuity that can be provided, on the earlier of the subsequent retirement date or the normal retirement date of the member, by the sum of the aggregate annuity payments as determined under sub. (2) (b) 2 made to the annuitant prior to his normal retirement date. The board, however, may adjust any annuity recomputed

under this paragraph as necessary to prevent any inequitable result.

(6) MINIMUM ANNUITY REQUIREMENT. (a) If the retirement annuity in the normal form which could be provided under this section from all available accumulations and credits, other than accumulations from voluntary additional deposits, is less than \$10 monthly, such retirement annuity shall not be paid, but in lieu thereof the then present value of such retirement annuity shall be paid in a single sum.

(b) Except as provided in par. (a), if the retirement annuity in the normal form which could be provided under this section from all available accumulations and credits, other than accumulations from voluntary additional deposits, is less than \$25 monthly, any member may elect to receive, in lieu thereof, the then present value of such retirement annuity in a single sum.

(7) PARTICIPATION IN VARIABLE ANNUITY PROGRAM. (a) Except as provided in this subsection, s. 42.243 shall be applicable to formula group members.

(b) Each member of the formula group may elect, by written notice filed with the board upon a form furnished by said board, to have 50% of his required deposits and not to exceed \$5,000 in any fiscal year of his additional deposits, paid into the retirement deposit fund of the variable annuity division. With respect to members who so elect or who made such an election prior to becoming members of the formula group, there shall concurrently be paid into the state accumulation fund of the variable annuity division an amount equal to the amount of each required deposit paid into the retirement deposit fund of the variable annuity division after June 30, 1966.

(c) Transfers of accumulations under s. 42.243 (3), with respect to members of the formula group, shall be subject to the following:

1. As of June 30, 1966, but as of June 30, 1973, for each member who becomes a member of the formula group on May 11, 1973, after the adjustments required by s. 42.243 (5) and (6), there shall be transferred from the required deposit account in the fixed annuity division of each member of the formula group to his required deposit account in the variable annuity division the amount equal to the excess, if any, of a) the accumulation in his account in the variable annuity division from state deposits, over b) the accumulation in his account in the variable annuity division from required deposits.

2. Any transfer of accumulations on or after July 1, 1966, shall consist of the transfer of equal amounts of required deposit accumulations and state deposit accumulations or contributions, equaling in total the amount of the annual

transfer, other than of accumulations from additional deposits, permitted under s. 42.243 (3), but the transfer of state deposit accumulations or contributions shall be to the state accumulation fund of the variable annuity division.

(d) The retirement deposit fund after June 30, 1966, shall not include deposits or payments made by the state for formula group members. On July 1, 1966, there shall be established for the purpose of providing variable annuity benefits for members of the formula group the state accumulation fund of the variable annuity division in the amount equal to the aggregate amount of the accumulations from required deposits of all such members in the variable annuity division. Net gains and losses shall be credited to the state accumulation fund of the variable annuity division at the same time and in the same amounts as such net gains and losses are credited to individual accounts in the retirement deposit fund of the variable annuity division with respect to accumulations of required deposits which are subject to this section.

History: 1971 c. 125, 214, 293; 1973 c. 20, 137, 337; 1977 c. 418.

A person who claims disability is entitled to a hearing upon notice. The matter is a contested case under 227.07. *Ruhmer v. Wisconsin State Teachers Retirement Bd.* 48 W (2d) 419, 180 NW (2d) 542.

42.246 Election of formula group benefits by members of separate group. (1) Any separate group member who is eligible to elect to participate in the formula group as provided in s. 42.244, and who so elects, or who becomes a formula group member pursuant to s. 42.244

(4), shall be subject to all laws and regulations applicable to the formula group, but he shall not be required to become subject to social security coverage. Each separate group member who becomes a formula group member shall also be subject to the following:

(a) For purposes of determining the amount of any benefit, with respect to each such member, it shall be assumed that the member is and was subject to subch. VI of ch. 40, and that the social security benefit expectancy of such member is the same as that of a combined group member with the same salary and service experience and the same age, whose social security coverage was effective January 1, 1955.

(d) Each such member may elect to participate in the variable annuity division to the same extent and under the same procedures as other formula group members.

(e) The initial amount of retirement annuity of each separate group member who becomes a member of the formula group, and who on or after September 11, 1965 elects to become subject to subch. VI of ch. 40, shall be the amount determined pursuant to s. 42.245 (2) reduced

by the annuity in the normal form which could be purchased by:

1. If determined pursuant to s. 42.245 (2) (b) or (c), the total amount transferred to pay retroactive social security contributions with respect to such member; or

3. If determined pursuant to s. 42.245 (2) (d), one-half of the amount so transferred, but excluding any amount by which the accumulation specified in s. 42.245 (2) (d) 3 was reduced by reason of such transfer.

(f) If the amount of the retirement annuity of a member of both the separate and formula groups, as calculated under s. 42.245 (2), is less than the amount to which such member would have been entitled under s. 42.49 (4), (6) or (7), the annuity shall be increased to such amount, and then adjusted as provided under s. 42.245 (2) (b) 1 if such person is a participant in the variable annuity, provided that the annuity shall be so increased only if said member pays into the retirement deposit fund a sum equal to the difference between the amount which said member actually paid into said fund and the amount which he would have paid into said fund if he had not become a member of the formula group, such payment to be made prior to filing an application for a retirement annuity.

History: 1971 c. 211; 1973 c. 20

42.32 Custody and disposition of funds.

The board shall receive, hold and pay out according to law, all deposits by the members and by the state and all accretions thereto and other moneys belonging to the several funds of the state teachers retirement system.

42.33 Assets, benefits, fund transfers.

(1) The board shall at all times maintain assets:

(a) In the "Annuity Reserve Fund" at least equal to the net present value of the prospective benefit payments according to the basic assumptions for the rates on which benefits have been granted;

(b) In the "Retirement Deposit Fund" equal to the liabilities for member deposits. State deposits for members of the separate group and the combined group and interest accretions shall be transferred to the state accumulation fund on July 1, 1973, except as otherwise provided in par. (d).

(c) On June 30, 1973, the then existing assets and liabilities of the contingent fund under s. 42.33 (1) (c), 1971 stats., shall be transferred to the annuity reserve fund under par. (a), as an account within such reserve fund.

(d) In the "State Accumulation Fund" equal to the contributions made by the state or the appropriate employers with respect to members of the formula group, with earnings and capital

gains accretions, as adjusted for transfers and payments therefrom. On July 1, 1966, the accumulations from state deposits in the accounts in the fixed annuity division and in the variable annuity division of all members of the formula group shall be transferred to the state accumulation fund. An amount of the state accumulation fund equal to the accumulations from required deposits from members of the formula group included in the variable annuity division shall constitute the state accumulation fund of the variable annuity division, and the remainder of the state accumulation fund shall constitute the state accumulation fund of the fixed annuity division.

(2) The board shall establish and maintain such reserve or surplus funds or accounts as the interests of the members and the future solvency of the funds may require. The board shall as of June 30 of each year make such valuations of the several funds as are necessary for the purposes of the system.

History: 1973 c. 20, 90

42.35 Classification, exceptions. (1)

Members of each retirement association, all of whom shall be members of the state teachers retirement system, are classified as follows:

(a) Class A. All persons who, on the day preceding July 8, 1921, were members of, or entitled to a benefit from, the teachers' insurance and retirement fund.

(b) Class B. Senior teachers employed in the public schools, the state universities or the university, after July 8, 1921, who prior to said date were teachers in any of said schools but were not members of the teachers' insurance and retirement fund.

(c) Class C. All members not included in Class A or in Class B.

(2) Persons residing outside of the United States and teaching temporarily in this state shall not come under the provisions of the state teachers retirement system.

(3) Persons on leave from an educational institution not under the state teachers retirement system and who are visiting professors, visiting associate professors, visiting assistant professors, or visiting lecturers at the university of Wisconsin or the state universities shall not come under the provisions of the state teachers retirement system provided their employment at the university or state universities is for not more than one year. If their employment at the university or state universities is continued for more than one year they will, at the start of the 2nd year of such employment, come under the state teachers retirement system.

(4) Persons engaged as teachers at the state universities or the university for summer sessions only, and who are not members of the state teachers retirement system, shall not come under that system.

(5) Persons who have been or will be appointed by the university of Wisconsin system under s. 36.19 as student assistants or employes-in-training shall not come under the provisions of the state teachers retirement system.

History: 1975 c. 224.

42.37 Board, duties. The board shall:

(1) Determine the age, sex, prior service, compensation and teaching experience of members.

(2) Determine the amounts deposited by members, the amounts to be deposited by the state on account of members, and the benefits payable to members.

(3) Maintain individual records and individual accounts for members.

(4) Furnish once each year to each member currently making deposits, a statement of his account together with appropriate explanatory material and shall furnish such statement and explanatory material to any other member upon request.

(5) Make such investigations of the mortality, disability, service and compensation experience of the system as are necessary, and on the basis of such investigations and the recommendations of the actuary adopt the rates at which annuities and other benefits shall be granted, but such rates shall be the same for the fixed and the variable divisions. No revision of rates shall affect the rights of any annuitant or beneficiary whose benefit was effective prior to the effective date of any such revision. The board may from time to time make such distribution of gains and savings as it deems equitable.

History: 1973 c. 20.

42.38 Court review. Any order, rule or determination of the board may be reviewed in the manner provided in ch. 227.

42.39 Reports to be furnished board.

Every employer shall furnish to the board such reports and information as the board requires, and the state superintendent of public instruction and the district and city superintendents shall give such aid and co-operation in furnishing or obtaining any such reports or information as may be required by the board.

42.40 Required deposits. (1) Each teacher who is a member of the separate group shall make a deposit in the retirement deposit fund

equal to 6% of all compensation received for teaching service performed by such teacher.

(2) Beginning on the first day of the first calendar quarter which begins after an agreement extending coverage under OASDHI to the members of the combined group under s. 42.241 becomes effective, each teacher who is a member of the combined group shall make a deposit in the retirement deposit fund equal to 4 1/2% of all compensation received for teaching service performed by such teacher.

(3) Any member, or any person on behalf of any member, may make additional deposits whenever said member has any credits in the retirement deposit fund. All amounts deposited by or on behalf of any teacher shall be held for the benefit of the individual teacher in the retirement deposit fund for the purpose of providing an annuity or other benefit as provided by this subchapter.

(4) No deposit shall be made under sub. (1), (2) or (6) by any part-time teacher at the university below the grade of instructor or any teacher who is or may be entitled to any benefit from the Carnegie Foundation for the advancement of teaching under any plan in force prior to November 17, 1915.

(5) No deposit shall be made under sub. (1), (2) or (6) by any person who was contributing to the employees retirement system of the county of Milwaukee on September 10, 1959, while such person is contributing to such system.

(6) Effective July 1, 1966, each member of the formula group shall make a deposit in the retirement deposit fund equal to 4-1/2% of all compensation received for teaching service performed by such teacher which is subject to contributions under subch. VI of ch. 40, plus 7% of such compensation not subject to such contributions, but each member of the formula group who performs services in connection with an activity carried on cooperatively by the federal government and the state or any political subdivision thereof, which services have been determined not to be subject to subch. VI of ch. 40, shall for purposes of this subsection and s. 42.20 (26) be deemed to be subject to subch. VI of ch. 40 with respect to such services.

(6a) Effective as to compensation paid on and after January 1, 1974, except as provided in sub. (9), each member of the system who is not an annuitant shall make a deposit in the retirement deposit fund equal to 5% of all compensation received for teaching service performed by such member.

(7) No deposit shall be made under sub. (1), (2) or (6) by any part-time teacher at the state universities below the grade of faculty assistant.

(8) (a) Effective for compensation received after June 30, 1967, the state shall deposit, in lieu of an equal amount of the deposits required from each member under this section for teaching service in the classified service of the state, an amount equal to 2% of the compensation received for such teaching service. 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 the compensation received. Such deposit by the state shall be credited to the account of each such member and shall be available for all retirement system benefit purposes to the same extent as normal deposits which are deducted from the earnings of such member. For purposes of computing retirement system deposits and benefits and maintaining accounts, all compensation of such members earned but not paid prior to July 1, 1967, shall be deemed to have been paid prior to July 1, 1967.

(b) Effective for compensation earned on and after November 5, 1971, the state shall deposit, in lieu of an equal amount of the deposits required from each member under any other paragraph of this section for teaching service in the unclassified service of the state, an amount equal to 4% of the compensation received. Such deposit by the state shall be credited to the account of each member in the state unclassified service and shall be available for all retirement fund benefit purposes to the same extent as normal deposits which are deducted from the earnings of each member.

(9) Notwithstanding those provisions of s. 42.41 relating to the deduction and withholding from the compensation paid as a teacher of deposits required under this section, any employer may make all or any part of such deposits in behalf and for the benefit of any teacher. Such payments by the employer shall be available for retirement system benefit purposes to the same extent as required deposits which were deducted from the compensation of such member. This subsection shall not be construed as creating any contract between the employer and any member of the system or as granting any contractual right in any form to any member.

History: 1971 c. 125, 214; 1973 c. 20.

42.41 Deductions from salaries; payroll.

(1) Every employer shall deduct and withhold from the compensation as a teacher paid by such employer to each teacher on each payroll for each payroll period such per cent of the compensation of each teacher, as such teacher is required to deposit under s. 42.40. Any person or officer whose duty it is to prepare the payroll for

the payment of any said teachers may be required by the board, on each such payroll, to furnish all information necessary for the timely and efficient administration of the system. The board shall provide any such person or officer information as to whether a teacher is a member of the separate group, combined group or formula group.

(2) Whenever deductions are made from compensation on any payroll the employer shall immediately send to the board a copy of such payroll in such form as approved by such board with a remittance payable to the order of the state treasurer for all deductions from the compensation of teachers on such payroll. The remittances may be by draft, money order or check or otherwise according to rule adopted by said board.

(3) The board shall immediately transmit to the state treasurer all payments received and shall audit the payrolls of all employers and shall determine the amount deductible from the compensation of members on each payroll.

(4) The board may provide by rule that the payroll reports under this section be made on a monthly, quarterly, semiannual or annual basis. Such basis may be different for different types of employers.

History: 1971 c. 214; 1973 c. 243 s. 82; 1975 c. 189.

42.42 Information to board. (1) PRIOR CONTRACTS. Every contract of employment as a teacher made after July 8, 1921 shall specify that it is subject to the provisions of the state teachers retirement law, and give the date of the birth of the teacher, and such other information as the board may require for the identification of the teacher.

(2) **EMPLOYER'S STATEMENT TO BOARD.** On or before September 30 in each year, the employer shall mail to the board a statement giving the name, address, and date of birth of all teachers employed for the ensuing school year, and such other information as the board may require for the identification of such teacher. Any teacher thereafter employed during the school year shall be reported within 30 days after such employment.

History: 1973 c. 20.

42.43 Employers' duties as to funds.

Every employer shall be responsible for the payment to the board of the required deposits to be made by every teacher in the service of such employer. No employer shall, without the consent of the member, withhold or deduct from any member's compensation on any payroll any amount in excess of the required deduction for the period covered by such payroll.

42.44 Salary less deductions to be complete payment. Notwithstanding any other law, rule or regulation affecting the salary, pay, compensation or tenure of any member, payment of such salary, pay or compensation to such member less the required deductions herein provided shall be a full and complete discharge and acquittance of all claims for service rendered by such member during the period covered by such payment.

42.45 State deposit; basis; military service. (1) (a) Except as provided in pars. (b), (c), (cn) and (co), the state deposit on behalf of each teacher who is required to make deposits under s. 42.40 (1) or (2) shall be an amount equal to the following percentage upon the required deposit made by such teacher during the fiscal year, namely, to 50% of the required deposit add 5% of the required deposit for each year of teaching experience excluding the year for which deposit is made, but the total shall not exceed 200% of the required deposit. In computing the state deposit, any amount of required deposit on account of any amount of annual compensation in excess of \$3,000 shall be disregarded in applying the above percentages. If the teacher received compensation for service as a teacher in the public schools, the state universities or the university, for not less than a school year during the fiscal year, the state deposit shall be increased by \$25.

(b) Beginning on July 1 following the execution of an agreement extending coverage under OASDHI to the members of the combined group under s. 42.241, the state deposit on behalf of each teacher who is a member of the separate group shall be computed in accordance with par. (a) and the state deposit for each other teacher shall be an amount equal to the required deposit made by such teacher under s. 42.40 (2). State contributions for members of the formula group for fiscal years beginning after June 30, 1966, shall be determined under s. 42.46 (3).

(c) For the fiscal year July 1, 1957, to June 30, 1958, the state deposit on behalf of a teacher who becomes a member of the combined group shall be not less than the state deposit would have been if such teacher had remained a member of the separate group.

(cm) For the fiscal year July 1, 1958, to June 30, 1959, the state deposit on behalf of a teacher who, pursuant to s. 42.241 (12a), became a member of the combined group before July 1, 1959, shall be computed in accordance with par. (a).

(cn) For the fiscal year July 1, 1959, to June 30, 1960, the state deposit on behalf of a teacher

who, pursuant to s. 42.241 (12a), became a member of the combined group after July 1, 1959, shall be an amount equal to the required deposit made by such teacher under s. 42.40.

(co) For any fiscal year beginning after June 30, 1965, during which a teacher who is not a member of the formula group becomes a member of the combined group pursuant to s. 42.241 (12a), the state deposit on behalf of such teacher shall be equal to the required deposit made by such teacher under s. 42.40, but the state contribution for any fiscal year beginning after June 30, 1966, with respect to a member of the formula group who during such year becomes a member of the combined group pursuant to s. 42.241 (12a) shall be determined under s. 42.46 (3).

(d) All state deposits shall be credited as of June 30 except that whenever, prior to the end of the fiscal year, a member's deposit accumulation is to be paid out as a death benefit pursuant to s. 42.50, or transferred pursuant to s. 42.48 immediately before such payment or transfer, the account of the member shall be credited with the same state deposit which it would have received on the following June 30. All amounts credited as state deposits shall be charged to the sums transferred to the state teachers retirement system therefor pursuant to s. 42.46.

(2) In computing the state deposit, a member who left the teaching profession to serve, and who served, the United States or any of its allies in World War I or in World War II in or with the army, including the WAACS, in or with the navy, including the WAVES, in or with the marines, including the U.S. marine corps women's reserve, in or with the coast guard, including the SPARS, or in the American field service, or who is called to active duty in the armed forces under P.L. 87-117 shall be credited with teaching experience for the time so served upon proof of such service and honorable discharge therefrom being furnished to the board, or having been furnished to its predecessor. In computing the state deposit, any member who left the teaching profession under agreement with the federal government to take training to teach, and who taught, persons in any of the aforesaid main or auxiliary branches of the United States military service during World War II shall be given like credit for the time spent in such training as well as in such teaching upon proof of such training and teaching being furnished to said board.

(3) Any member who left the teaching profession in Wisconsin from a position in which he was making or in which he had been compelled to make required deposits or in which he would have been compelled to make required deposits if he had been a senior teacher to serve, and who

served, the United States or any of its allies in World War I, in World War II, or after June 25, 1950 and during a period of national emergency or under P.L. 87-117, in or with the army, including the WAACS, and WACS, in or with the navy, including the WAVES, in or with the marines, including the U.S. marine corps women's reserve, in or with the coast guard, including the SPARS, or in the American field service who teaches in Wisconsin after August 4, 1951, in a position in which such member is compelled to make required deposits or in which he would have been compelled to make required deposits if he had been a senior teacher, shall be credited with teaching experience for the time so served, of which not to exceed 4 years shall be credited as teaching experience in the public schools, the state universities or the university in this state, upon proof of such service and honorable discharge therefrom being furnished to the board, or having been furnished to its predecessor. Any member who left the teaching profession in Wisconsin from a position in which he was making or in which he had been compelled to make required deposits under agreement with the federal government to take training to teach, and who taught persons in any of the aforesaid main or auxiliary branches of the United States military service during World War II, or after June 25, 1950 and during a period of national emergency, and who teaches in Wisconsin after August 4, 1951, in a position in which such member is compelled to make required deposits, shall be given like credit for the time spent in such training as well as in such teaching upon proof of such training and teaching being furnished, or having been furnished to said board. This amendment (1957) is retroactive to August 4, 1951, with respect to members who have retired since that date. The annuities of such members shall be recomputed in accordance with this amendment (1957) and each such member shall be paid the difference between the amounts received and the amounts which would have been paid if this amendment (1957) had taken effect August 4, 1951. Payment for such retroactive period shall be made to members only and not to the beneficiaries, heirs, assigns or estate of any member who has died before August 31, 1957.

(4) Any member who receives credit as teaching experience for military or teaching service as provided in sub. (3), who so elects may make deposits for the period for which he received such credit as teaching experience, and as of the following June 30, such member shall be credited with corresponding state deposits calculated according to the state deposit formula in effect on June 30, 1947 or on the date he entered on active duty with the armed forces

if such date was after August 1, 1961. The deposits which may be made by the member pursuant to such election shall be equal to the required deposits which should have been made by such member for such portion of the period covered by such election during which he would have been a senior teacher had he remained in teaching, computed on the basis of the monthly salary received during the first fiscal year after such period in which said member returned to teaching in a position in which said member was compelled to make required deposits. Any state deposits which are made pursuant to this subsection shall be forfeited by the member for whom they were made unless he has had at least 4 years of teaching experience under the state teachers retirement system after completion of any of the military service or training and teaching described in sub. (3), except that such state deposits shall not be forfeited if the member has taught for a period at least equal to 50% of the time, not exceeding 8 years, between the date of completion of such military service or training and teaching and the date of his death.

(5) Notwithstanding subs. (2) to (4), no credit shall be granted thereunder for any period after June 30, 1966. Credit for active service in the U.S. armed forces after June 30, 1966, shall be granted as provided in s. 40.80, and shall be determined and credited in accordance with s. 42.245 (1a).

History: 1971 c. 214.

A war or national emergency has existed within the meaning of 42.45 (3), (4), Stats. 1969, relating to the Wisconsin teachers retirement fund, between September 16, 1940, and December 31, 1946, and from June 25, 1950, to the present time. 59 Atty. Gen. 234.

42.46 Maintaining status of funds. (1)

The board shall determine annually the amount required to be paid into the state accumulation fund pursuant to sub. (3).

(2) (a) As of June 30 of each year, the board shall cause a valuation to be made of the fund on such basis as the board establishes to determine the amounts necessary to maintain the assets of the fund as required by this section. The results of such valuation as of any June 30 shall provide the basis for the determination of the amount of the payments to be made under par. (b) for the 2nd fiscal year which begins after such valuation date.

(b) The board shall certify the contribution rate derived in accordance with sub. (3) to the department of administration and to each state department or agency and each public school employing or paying the salaries of teachers. The heads of the respective departments and agencies and of each public school which make the salary deductions in accordance with s. 42.40 shall at the time that the salary deductions

are sent to the board, by applying the contribution rate to the compensation of the respective employes of that department or agency, or public school determine the amount of the corresponding employer contribution to be transmitted with the payroll report submitted to the system, except that until July 1, 1974, employer contributions for vocational, technical and adult education districts shall be paid by the state, and the system shall determine the required employer contribution and transmit summaries of such payroll reports to the department of administration together with a voucher for payment to the state teachers retirement system, from the appropriate state funds and appropriations of the amounts payable thereto as indicated by the payroll reports. Thereupon the department of administration shall approve such voucher for payment within 5 days after its receipt and the treasurer shall issue a check therefor to the state teachers retirement system.

(3) For the purpose of providing benefits to members of the formula group, as provided by this subchapter, the state shall pay each fiscal year to the state teachers retirement system for credit to the state accumulation fund as provided by subs. (1) and (2), the amount equal to the sum of the normal contribution and the accrued liability contribution for such year. The amounts of such contributions shall be determined annually by the board on the basis of such estimates of interest, mortality, salary increases and dropout rates as are applied to the system, and such other tables as the board approves, as follows:

(a) The accrued liability shall be determined as of June 30, 1966, as the then present value of all future benefits to or for the then members of the formula group to be paid or purchased from the state accumulation fund, less the present value of a percentage of the prospective future compensation of such members, and less the amount then credited to the state accumulation fund for the benefit of the members. The percentage referred to in the preceding sentence shall be determined as the uniform percentage of the compensation of all such members which if contributed throughout the entire period of the employment of each as a teacher in Wisconsin teaching would be sufficient to provide for all benefits to be paid or purchased on their behalf from the state accumulation fund. The accrued liability contribution shall be the uniform annual amount required to liquidate the accrued liability within 40 years from July 1, 1966. The accrued liability shall be redetermined as of June 30, 1973, on the basis provided in this paragraph, and the accrued liability contribution thereafter shall be as nearly as is possible

the uniform annual amount required to liquidate the redetermined accrued liability within 40 years from July 1, 1974.

(b) The normal contribution rate for any fiscal year commencing after June 30, 1965, shall be the uniform percentage of the compensation of all members of the formula group determined as of the valuation date by deducting from the then present value of all future benefits to be paid or purchased from the state accumulation fund on behalf of the then members of the formula group the amount then credited to said fund for the benefit of the members and the present value of future accrued liability contributions of the members, and dividing the remainder by the present value of the prospective future compensation of all such members.

History: 1971 c. 214; 1973 c. 20, 90; 1975 c. 41, 199

42.47 Apportionment of earnings. As of June 30 of each year the board shall determine the earnings to be apportioned to the several funds. Such earnings shall be apportioned and credited to the several funds at the rates determined by the board, provided that the rate of apportionment to the annuity reserve fund shall be at least equal to the interest rate used in the valuation of the benefits payable from such fund.

42.475 Interest on withdrawals and transfers. Whenever a member's deposit accumulation, state deposit accumulation or an amount in the state accumulation fund is to be paid out as a death benefit pursuant to s. 42.50, or is transferred to the annuity reserve fund pursuant to s. 42.48, interest shall be credited to the amount to be so paid out or transferred for each 3-month period which has elapsed since the preceding June 30 at one-fourth of the rate at which earnings were apportioned on such June 30. The interest so credited shall be charged to the earnings for the current fiscal year and shall be paid out or transferred with the amount to which it was so credited. Interest credited pursuant to this section shall be excluded from the determination of the excess or deficiency resulting from participation in the variable annuity division as required by s. 42.245 (2) (b) 1 or (d) 4.

42.48 Application for benefits. A member may apply at any time to the board, on a form furnished by it, for a benefit. The board shall determine the benefit to be paid to the member, which shall be certified by the board to the department of administration. The department of administration shall thereupon issue its warrants upon which the state treasurer shall make payments accordingly. If the benefit applied for

is other than a single payment the board shall transfer the amount of the member's individual accumulation covered by the application as so certified, from the retirement deposit fund to the annuity reserve fund, and shall transfer from the state accumulation fund to the annuity reserve fund the additional amount required to provide the benefit if payable to or on account of a member of the formula group, and the benefit shall thereafter be paid from the annuity reserve fund. The state treasurer shall make payment by check to the order of the member or beneficiary and the personal indorsement of the payee shall be sufficient receipt and shall constitute a statement that the payee is entitled to the payment of such benefit in full compliance with the requirements of the law.

42.49 Withdrawals; annuities; disability benefits. Except as provided otherwise, this section shall apply only to members of the separate group.

(1) **WITHDRAWALS.** Upon the expiration of 6 months after filing application with the board by a member who has ceased to be employed as a teacher in the public schools, state universities or university in this state, and who is not on a leave of absence from a teaching position in the public schools, state universities or university in this state, the accumulations from the member's deposits, or any part thereof, may be withdrawn:

(a) In a single payment, or

(b) In such instalments as the board shall approve.

(2) **ANNUITY FROM MEMBER'S DEPOSITS.** When a member has ceased to be employed as a teacher in the public schools, state universities or university in this state, and is not on a leave of absence from a teaching position in the public schools, state universities or university in this state, the accumulation from the member's deposits may be applied by the member as a net single premium at the rate certified by the board, to the purchase of an annuity, the first payment to be made in such month and year after the application for the annuity is received by the board as the member directs, which annuity may be:

(a) An annuity payable monthly to the member during life;

(b) An annuity payable monthly to the member during life, with a guarantee of at least 180 monthly payments.

(c) An annuity payable monthly to the member during life, and after death of the member, monthly payments of one-half the monthly amounts paid to the member to be continued to such beneficiary during life as the member shall

have designated in the original application for a retirement allowance; or

(d) An annuity payable monthly to the member during life, and after the death of the member, the same monthly payment to be continued to such beneficiary during life as the member shall have designated in the original application for a retirement allowance; or

(e) In such life annuity or annuities as the board approves but the amount payable monthly to others upon the death of the member shall not be more than the amount which would have been payable monthly to the member if he continued to live.

(f) Small amounts remaining in the retirement deposit fund to the credit of a member which may have been omitted in the purchase of an annuity or annuities may, at the discretion of the board, be paid to the member in a single payment in lieu of an adjustment to the annuity or annuities purchased under this subsection.

(3) **ANNUITY FROM STATE DEPOSITS.** When a member has ceased to be employed as a teacher in the public schools, state universities or university in this state, and is not on leave of absence from a teaching position in the public schools, state universities or university in this state, the accumulations from state deposits may be applied by the member, except as provided in sub. (15), to the purchase of an annuity in the same manner as provided in sub. (2) (a), (b), (c), (d) or (e), except that the first payment cannot be made before the 50th birthday anniversary of the member unless he has qualified for a disability annuity under sub. (9) (a). Small amounts remaining in the retirement deposit fund to the credit of a member which may have been omitted in the purchase of an annuity may, at the discretion of the board, be paid to the member in a single payment in lieu of an adjustment of the annuity purchased under this subsection.

(4) **INCREASED ANNUITY BASED ON TOTAL SERVICE; \$2 MINIMUM.** (a) When a member who has taught after August 3, 1947, ceases to be employed as a teacher in the public schools, state universities or university in this state and is not on a leave of absence from a teaching position in the public schools, state universities or university in this state, and has attained the age of 60 years or more, and has had not less than 30 years of teaching experience of which not less than 20 years were in the public schools, the state universities or the university in this state, and has applied the entire accumulations from required deposits as provided in sub. (2), and the accumulations from state deposits have been applied by the member to the purchase of an annuity as provided in sub. (3), and when the annuity purchased by such accumulations from state

deposits, together with the annuity, if any, provided for the member under s. 42.51 (3), when computed as an annuity payable monthly to the member during life is less than an annuity of \$2 per month for each year of the member's teaching experience, not exceeding 35 years, in the public schools, state universities or university in this state, the annuity to the member shall be increased so that the member shall be paid an annuity for life equal to such annuity, or the actuarial equivalent of such life annuity. The increase in the annuity shall be paid from the contingent account of the annuity reserve fund.

(b) The increased annuity provided in par. (a) shall not be available for any member who has at any time withdrawn any amount from the retirement deposit fund or received any annuity under this subchapter, except that:

1. The increased annuity shall be available for any member who has withdrawn any amount from the retirement deposit fund if the amount withdrawn, except additional deposit accumulations, is repaid to the retirement deposit fund, with interest at the rate of 3% per annum from the date of withdrawal to the date of repayment, before application is made for an annuity under this section.

2. The increased annuity shall be available for any member who makes the repayment required by subd. 1, who has been an annuitant under this subchapter, who returned to teaching and made required deposits prior to August 3, 1947, and who, after July 31, 1949, taught in a position which compelled such member to make required deposits, if when such member makes application for such increased annuity, all of the accumulations, except additional deposit accumulations, then to the credit of such member in the retirement deposit fund shall be used to increase the annuity last granted to such member and the increased annuity must be taken in the form of the annuity so last granted, which shall be decreased by that portion of the annuity or annuities previously granted to such member from his state deposit and prior service accumulations.

(5) CREDIT FOR OUTSIDE TEACHING EXPERIENCE. Any member with years of teaching experience other than in the public schools, the state universities or the university in this state, who, after July 1, 1951, teaches in a position in which such member is compelled to make required deposits, may have such years of teaching experience counted as the equivalent of years of teaching experience in the public schools, the state universities or the university in this state for all purposes under sub. (4), subject to the following requirements and limitations:

(a) Any member claiming teaching experience under this subsection shall make written

application and certify to the board such information as said board may require concerning such experience and no such teaching experience shall be allowed unless approved by the board.

(b) No member may be allowed years of teaching experience under this subsection, the total of which exceeds two-fifths of the total years of teaching experience both within and without this state. Where the years of teaching experience other than in the public schools, the state universities or the university in this state shall exceed two-fifths of the total years of teaching experience both within and without this state, the years of such experience allowed shall be counted in reverse chronological order.

(c) When such teaching experience is approved by the board, it shall be entered upon the member's account as years of teaching experience subject to the payment of deposits and interest as required herein.

(d) No years of teaching experience claimed under this subsection shall be approved unless the member shall certify and furnish such proof as the board may require that the member is not otherwise entitled to the payment of any benefits on account of such teaching experience except the return of the member's contribution either with or without interest.

(e) When a member claiming years of teaching experience under this subsection shall make application for an annuity under sub. (4), such member shall pay into the retirement deposit fund a sum equal to the deposits which would have been required of the teacher had such years of teaching experience been in the public schools, the state universities or the university in this state at the same times and at the same salaries, together with interest at 3% per annum, calculated on the deposit for each year of such teaching experience from July 1 next following the actual year of teaching experience to July 1 nearest the retirement date.

(f) Nothing in this subsection shall be construed to require any state deposit for any year of teaching experience counted under this subsection.

(6) INCREASED ANNUITY BASED ON LAST 5 YEARS OF SALARY. (a) When a member who, after July 29, 1951, taught in a position which compelled such member to make required deposits, ceases to be employed as a teacher in the public schools, state universities or university in this state, and is not on a leave of absence from a teaching position in the public schools, state universities or university in this state, and has attained the age of 60 years or more, and has had not less than 30 years of teaching experience of which not less than 20 years were in the public schools, the state universities or the university in

this state, and has applied the entire accumulation from required deposits as provided in sub. (2) and the accumulation from the state deposits has been applied by the member to the purchase of an annuity as provided in sub. (3):

(b) If the annual amount of the annuity provided under sub. (3), together with the annual amount of the annuity, if any, provided for the member under s. 42.51 when computed as an annuity payable to the member during life is less than one-one hundred fortieth of the average annual salary received by the member for the last 5 years of teaching experience in the public schools, the state universities, or the university in this state, provided that any excess of such average over \$4,800 shall be disregarded, multiplied by the number of years of the member's teaching experience not exceeding 35 years in the public schools, the state universities, or the university in this state, the said annuity to the member shall be increased so that the member shall be paid an annuity for life equal to such amount, or the actuarial equivalent of such life annuity, and

(c) If the sum of the annual annuity provided in par. (b) and the annual annuity purchased by the accumulation of required deposits when computed as an annuity payable to the member during life is less than one-seventieth of the average annual salary as defined in par. (b), multiplied by the number of years of the member's teaching experience not exceeding 35 years in the public schools, the state universities, or the university in this state, the annuity to the member shall be increased so that the member shall be paid an annuity for life equal to such amount, or the actuarial equivalent of such life annuity. Any such increases in the annuity shall be paid from the contingent account of the annuity reserve fund. Any increased annuity herein provided shall not be available for any member who has at any time withdrawn any amount from the retirement deposit fund or received any annuity under this subchapter, except that

(d) The increased annuity shall be available for any member who has withdrawn any amount from the retirement deposit fund if the amount withdrawn, except accumulations from additional deposits, be repaid to the retirement deposit fund, with interest at the rate of 3% per annum from the date of withdrawal to the date of repayment, before application is made for an annuity under this subsection, and

(e) The increased annuity shall be available for any member who makes the repayment required by par. (d), who has been an annuitant under this subchapter, and who returned to teaching and made required deposits prior to

July 29, 1951. When such member makes application for such increased annuity, all of the accumulations, except accumulations from additional deposits, then to the credit of such member in the retirement deposit fund shall be used to increase the annuity last granted to such member and the increased annuity must be taken in the form of the annuity so last granted, which shall be decreased by that portion of the annuity or annuities previously granted to such member from his required deposit, state deposit and prior service accumulations.

(7) INCREASED ANNUITY BASED ON TOTAL SERVICE IN STATE SYSTEM; \$2 MINIMUM. (a) When a member who has taught after July 29, 1951, ceases to be employed as a teacher in the public schools, state universities or university in this state and is not on a leave of absence from a teaching position in the public schools, state universities or university in this state, and has attained the age of 60 years or more and has had not less than 25 years of teaching experience in the public schools, the state universities or the university in this state, or has attained the age of 55 years or more and has had not less than 30 years of teaching experience in the public schools, the state universities or the university in this state, and has applied the entire accumulation from the member's required deposits as provided in sub. (2), and the accumulations from the state deposits have been applied by the member to the purchase of an annuity as provided in sub. (3), and when the annuity purchased by such accumulations from the state deposits, together with the annuity, if any, provided for the member under s. 42.51 (3), when computed as an annuity payable monthly to the member during life is less than an annuity of \$2 per month for each year of the member's teaching experience, not exceeding 35 years, in the public schools, state universities or university in this state, the annuity to the member shall be increased so that the member shall be paid an annuity for life equal to such annuity, or the actuarial equivalent of such life annuity. The increase in the annuity shall be paid from the contingent account of the annuity reserve fund.

(b) The increased annuity herein provided shall not be available for any member who has at any time withdrawn any amount from the retirement deposit fund or received any annuity under this subchapter, except that:

1. The increased annuity shall be available for any member who has withdrawn any amount from the retirement deposit fund if the amount withdrawn, except accumulations from additional deposits, is repaid to the retirement deposit fund, with interest at the rate of 3% per annum from the date of withdrawal to the date

of repayment, before application is made for an annuity under this section.

2. The increased annuity shall be available for any member who makes the repayment required by subd. 1, who has been an annuitant under this subchapter, who returned to teaching and made required deposits prior to July 29, 1951, and who, after such date teaches in a position in which such member is compelled to make required deposits. When such member makes application for such increased annuity, all of the accumulations, except accumulations from additional deposits, then to the credit of such member in the retirement deposit fund shall be used to increase the annuity last granted to such member and the increased annuity must be taken in the form of the annuity so last granted, which shall be decreased by that portion of the annuity or annuities previously granted to such member from his state deposit and prior service accumulations.

(8) BENEFITS NOT REDUCED BY TEACHING AFTER QUALIFYING FOR ANNUITY. If any member who meets the requirements of subs. (4), (6) or (7) has attained the age of 60 years or more, and has 35 years or more of teaching experience in the public schools, the state universities or the university in this state, and selects an annuity in a form other than a life annuity, the total amount of such annuity including the annuity purchased by the member's deposits shall be not less than the annuity of the same form to which the member would have been entitled had he retired immediately upon reaching 60 years of age and completing 35 years of such teaching experience. The amount of any annuity under subs. (4), (6) or (7) for a male member shall not be less than the annuity to which a female member would be entitled upon retiring with like qualifications.

(9) DISABILITY ANNUITIES. (a) If, before attaining age 55, a member who has made required deposits for not less than a school year during each of 5 fiscal years and who was employed in teaching or was on leave of absence from teaching in this state, within the 12-month period immediately preceding the occurrence of disability, becomes physically or mentally incapacitated to such extent that the member is wholly, and presumably will be permanently, unable to engage in teaching, and furnishes due proof thereof and that such disability has then existed for 60 days, the member shall be paid from the contingent account of the annuity reserve fund an annuity during the continuance of such disability, in monthly payments of \$25 each, in addition to any other benefit payable to such member. The board may at any time not more than once in any year require proof of the continuance of such disability and if the member

shall fail to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in teaching, such annuity shall cease.

(b) A member who has attained age 55 but who has not attained the minimum age required to qualify for the minimum benefit as provided in sub. (4) who has made required deposits for not less than a school year during each of 5 fiscal years, and who was employed in teaching or was on leave of absence from teaching in this state within the 12-month period immediately preceding the occurrence of disability, and becomes physically or mentally incapacitated as provided in this subsection, and furnishes due proof thereof, and that such disability has then existed for 60 days, shall be entitled to the increased annuity described in sub. (4) upon application therefor to the board if said member has had not less than 20 years of teaching experience in schools, departments or institutions included in the state teachers retirement system, and applies the entire accumulation from the member's required deposits at the time that such disability occurs toward the purchase of an annuity.

(c) The increased annuity herein provided shall not be available for any member who has at any time withdrawn any amount from the retirement deposit fund or received any annuity under this subchapter, except that:

1. The increased annuity shall be available for any member who has withdrawn any amount from the retirement deposit fund if the amount withdrawn, except accumulations from additional deposits, be repaid to the retirement deposit fund, with interest at the rate of 3% per annum from the date of withdrawal to the date of repayment, before application is made for an annuity under this section.

2. The increased annuity shall be available for any member who makes the repayment required by subd. 1, who has been an annuitant under this subchapter, who returned to teaching and made required deposits prior to July 29, 1951, and who after such date teaches in a position in which such member is compelled to make required deposits. When such member makes application for such increased annuity, all of the accumulations, except accumulations from additional deposits, then to the credit of such member in the retirement deposit fund shall be used to increase the annuity last granted to such member and the increased annuity must be taken in the form of the annuity so last granted, which shall be decreased by that portion of the annuity or annuities previously granted to such member from his state deposit and prior service accumulations.

(d) The board may at any time not more than once in any year during each of the first 5 years

after such disability annuity has been granted require proof of the continuance of such disability and if the member shall fail to furnish satisfactory proof thereof, or if it appears at any time during said 5-year period that the member has become able to engage in teaching, such increase in the annuity shall cease.

(e) This subsection shall apply to members of the separate group, the combined group and the formula group, but any benefit hereunder to a member of the formula group shall be provided from the state accumulation fund. Persons receiving benefits under s. 42.242 (4) or 42.245 (3) shall not receive benefits under this subsection.

(10) SUPPLEMENTAL BENEFITS. (a) Any person who receives an annuity for the month of September 1974, from the state teachers retirement system shall, subject to a continuation of the appropriation made by s. 20.515 (1) (a), be eligible to receive, s. 42.49 (intro.) notwithstanding, the following:

1. The monthly annuities, including amounts provided under s. 42.49 (10) and (16), 1971 stats. subject to pending adjustments under s. 42.49 (16) (a) 1. d, 1971 stats., which the person was eligible for and received for September 1974; plus

2. An amount which is equal to 4% times the number of full calendar years since the annuity began to January 1, 1974, except teachers who retired prior to May 11, 1973, shall be deemed to have been retired at least one calendar year, times the smaller of \$250 or the initial monthly annuity excluding amounts provided under s. 42.49 (10) and (16), 1971 stats., and from additional deposits, provided that if the total initial monthly annuities exceed \$250 such percentages shall be applied only to the annuities in effect the longest. Benefits under this subdivision shall be payable to the surviving beneficiary, who receives an annuity, of eligible persons except, if the beneficiary is the survivor of a person who died while receiving an annuity from the state teachers' retirement system, the amount payable under this subdivision shall be calculated based upon the beginning date of the decedent's annuity rather than the beginning date of the survivor annuity. If the form of annuity elected provided for one monthly amount initially and a different amount at some time in the future, for purposes of this subdivision, the initial monthly amount shall be determined for each month as the amount payable in that month pursuant to the initial computation for the form of annuity elected.

(b) Any benefit payable by virtue of this subsection in excess of the amounts payable under other provisions of this subchapter shall

be paid from and be subject to a continuation of the appropriation made by s. 20.515 (1) (a).

(c) Determinations of eligibility and the amount of any payment to be made under this subsection shall be made by the department, and shall be certified by the department for payment in the manner specified in s. 42.48 for payments from the state teachers retirement system.

(d) No payment shall be made under this subsection, nor shall any right accrue under this subsection, for or after any month for which the member receives compensation which is subject to s. 42.40 (6a).

(14) LUMP SUM WITHDRAWAL; FORFEITURE. Any member of the separate group, who ceases to be employed as a teacher in the public schools, state universities or university in this state, and is not on leave of absence from a teaching position in the public schools, state universities or university in this state, shall be paid the accumulation from all of the member's deposits, on filing with the board a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of such member under the state teachers retirement law.

(15) LUMP SUM PAYMENT. Any member, after attaining the age of 55 years, having ceased to be employed as a teacher in Wisconsin teaching and not being on an authorized leave of absence from a teaching position in Wisconsin teaching, whose accumulation from state deposits would not provide an annuity in the normal form of at least \$25 monthly, may apply such accumulation to the purchase of an annuity as provided in sub. (3) or may withdraw such accumulation in a single payment upon filing an application therefor with the board in such form as the board requires, but the payment of said accumulation in a single sum shall be made only with, or after, the withdrawal of all of the accumulation from the member's own deposits in accordance with sub. (1).

(16) WITHDRAWAL PROVISIONS FOR UNIVERSITY SYSTEM EMPLOYEES-IN-TRAINING. Persons appointed prior to July 1, 1976, to positions covered by s. 42.35 (5) may withdraw the employee's prior contributions to the state teachers retirement system upon application consistent with s. 42.245 (4).

History: 1971 c. 290; 1973 c. 20, 337; 1975 c. 39 s. 734; 1975 c. 189, 224; 1977 c. 336.

42.50 Death benefits, how paid. (1) The death benefit payable to a beneficiary shall be the full amount of the accumulation in the retirement deposit fund to the credit of the member from all member's deposits plus:

(a) In the case of a member of the formula group the accumulation at the date of death if

prior to July 1, 1966, and otherwise the accumulation at June 30, 1966, from state deposits made on the member's behalf, compounded to the end of the last completed calendar month preceding death at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year, but any accumulation on June 30, 1966, from state deposits in the variable annuity division shall be so compounded at the respective rates of net gains and losses credited to individual accounts in the variable annuity division; or

(b) In the case of a member of the separate group or the combined group, the accumulation from all state deposits made on his behalf.

(c) In the case of death after May 11, 1973 of a member of the formula group who was a member of the system on June 30, 1966, the accumulation at June 30, 1973, or at the date of death of the member if earlier, from state deposits made on the member's behalf, compounded to the end of the last completed calendar month preceding death at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year, but any accumulation on June 30, 1973, from state deposits in the variable annuity division shall be so compounded at the respective rates of earnings and capital gains and losses credited to individual accounts in the variable annuity division. For purposes of this paragraph the accumulation from state deposits at June 30, 1973, is deemed to include an amount equal to the accumulation from a member's required deposits for teaching service in Wisconsin teaching during the period July 1, 1966, through June 30, 1973.

(2) Any death benefit payable pursuant to this section shall be payable to the beneficiary either as a single payment, instalments certain or as an annuity in one of the optional forms set forth in s. 42.49 (2) (a) or (b) as elected by the beneficiary.

(3) (a) Upon the death of an annuitant receiving a retirement annuity which provides a guaranteed number of monthly payments, monthly payments shall be continued to one beneficiary, or be divided as specified by the annuitant, and equally if not specified, between 2 or more beneficiaries designated by such annuitant, until payments have been made for the guaranteed number of months. Any such beneficiary may elect at any time to receive the then present value of the benefit in a single sum.

(b) In lieu of the continuation of monthly payments under par. (a), the then present value of such payments shall be paid as a single payment if:

1. The estate of the annuitant is the beneficiary;

2. No beneficiary of the annuitant survives;

3. The death of the beneficiary occurs after the beneficiary has become entitled to receive payments under this subsection, but prior to the end of the period guaranteed;

4. The amount of the monthly payments to the beneficiary is less than \$25; or

5. At the death of the annuitant the remainder of the period for which payments are guaranteed is less than 12 months.

(4) Upon the death after June 30, 1966, of a member age 60 or more of the formula group while employed as a teacher in Wisconsin teaching, or while on authorized leave of absence from a teaching position in Wisconsin teaching, and if such member has not previously been granted an annuity under this subchapter, there may be paid in lieu of any other benefit under this section a death benefit as follows:

(a) If the beneficiary to whom a death benefit is payable is a spouse, child under age 21 or child age 21 or older if handicapped (including a legally adopted child or a stepchild), or other dependent of such member, as determined by the board, or a trust in which such beneficiary has a beneficial interest, a benefit having a present value at the day following the date of death of such member of the life annuity to the beneficiary which would have been payable if such member had been eligible to receive a retirement annuity beginning on the date of his death and had elected to receive such annuity in the optional form provided under s. 42.49 (2) (d).

(b) If there is more than one such designated beneficiary, the amount of such annuity and its present value shall be determined as if the oldest of such beneficiaries were the sole beneficiary.

(5) Upon the death of a member of the formula group receiving a disability annuity under s. 42.245, a death benefit shall be payable to his beneficiary in the amount of the excess, if any, of the accumulations from member required deposits applied to provide the annuity over the aggregate amount of disability annuity payments received by the member. If the beneficiary or beneficiaries to whom a death benefit is payable is a spouse, minor child (including stepchild or legally adopted child), or a trust in which such beneficiary has a beneficial interest, the death benefit shall not be less than:

(a) If such death occurs prior to the 65th birthday of the member the present value, at the date of such death, of the life 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 under sub. (1) if such 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 such date. Such present values shall be determined at the rates certified by the board; or

(b) If such death occurs on or after the 65th birthday of the member, the excess, if any, of the accumulations from member required deposits applied to provide the annuity over the aggregate amount of disability annuity payments received by the member after his 65th birthday.

(6) Upon the death of a member after credits have been reestablished in his account pursuant to s. 42.245 (5) (b), the amount of a death benefit shall be as otherwise determined under this section, but the amount so determined shall be reduced by the sum of all retirement annuity payments received by such member.

History: 1973 c. 20, 137; 1975 c. 189, 357, 421.

42.51 Computation for prior service; credits and retirement. (1) As of the close of the fiscal year preceding the date of issue of a certificate of membership to any member of Class A or Class B, the board shall cause a computation to be made separately for such member of the accumulation which would have resulted at such date from state deposits on account of the compensation for prior service as if this subchapter had been in effect during such prior service. In making such computation the board shall credit each teacher with time absent from his profession while serving as a soldier, sailor, marine or nurse in the armed forces of the United States during World War I, upon proof of such service being furnished the board.

(2) In making such computation, the rate of interest assumed shall be 4% per annum, and such averages and other methods of approximation may be employed as shall produce substantially correct results. The amount of such computation shall be carried forward and accumulated at the rate of interest used for deposits in the retirement deposit fund.

(3) When any member of Class A or Class B who has taught at least 25 years in the public schools, the state universities or the university is paid an annuity under s. 42.242 or 42.49 (3) the annuity shall be increased by the annuity which would be granted at the rates then in force on an accumulation equivalent to the amount of the computation above defined, and such additional annuity shall be paid from the contingent account of the annuity reserve fund. This section shall not authorize or include any increase in or addition to the death benefit provided in s. 42.50 for any person who did not come within or under this subchapter, relating to the state teachers retirement system, prior to July 16, 1923.

(4) Upon the issue of a certificate of membership to any member of Class A, the board shall determine the accumulation as of July 8, 1921, resulting from the payments by such member to the teachers' insurance and retirement fund with interest thereon at the actual rate earned by said fund. The said board shall thereupon transfer the amount of such accumulation to the credit of said member in the retirement deposit fund as of July 8, 1921.

(5) Any member of Class A, having elected to retire before July 8, 1921, shall from said date, be paid the benefits provided under the teachers' insurance and retirement fund law, subject to all the conditions thereof, except the pro rata reduction authorized thereby, as if said law had continued in effect during the payment of such benefits. Such payments shall be made from the contingent account of the annuity reserve fund, except as other provision shall be made therefor.

(6) (a) Any member of Class A who shall have complied with this subchapter and who shall elect to retire after July 8, 1921, may elect to relinquish any other benefits under this subchapter and to receive in lieu thereof the benefits provided under the teachers' insurance and retirement fund law as if said law continued in effect until such benefits are fully paid, subject to all the conditions of said law, except the pro rata reduction authorized thereby; provided, that if the member shall, before such election to retire, have received any benefit derived from required deposits, the amount so received, with interest, shall be repaid by a pro rata reduction of the future benefits so elected by such member. The accumulation to the credit of the member in the retirement deposit fund shall be applied at the rates then in force toward the payment of the benefit so elected and any remaining part of the benefit so elected shall be paid from the contingent account of the annuity reserve fund.

(b) Notwithstanding any other provisions of the statutes, s. 42.49 (4), (6) and (7) relating to an increased annuity apply to a member who retired pursuant to this subsection if after June 24, 1955 such member teaches in a position which requires him to make, and he does make, required deposits; but such increased annuity shall be payable as a monthly annuity for life only and the quarterly annuity portion thereof which was granted pursuant to this subsection shall be converted to a monthly annuity and such increased annuity shall also be decreased by all of that portion of such quarterly annuity which previously was granted to such member from the contingent account of the annuity reserve fund.

(7) Notwithstanding s. 42.54, any member of Class A who, after July 7, 1921, did not teach, and was not under contract to teach, in a position which required such member to make deposits in the state teachers retirement system, and who has not received, and is not eligible to receive, an annuity as a result of the deposits which such members made in the teachers' insurance and retirement fund shall, by making application therefor to the board, be paid in a single sum, and without interest, the amount which such member paid into such fund and did not withdraw heretofore.

(8) Any person receiving an annuity paid on a quarterly basis under ss. 42.01 to 42.18, statutes of 1919, may elect to have such annuity paid on a monthly basis. Such election shall be made in writing on a form furnished by the board.

History: 1973 c. 20.

42.52 Assignments. (1) The benefits payable to, or other right and interest of any member, beneficiary or distributee of any estate under the state teachers retirement law shall be exempt from any tax levied by the state or any subdivision thereof, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically provided in this section. The exemption from taxation contained in this section shall not apply with respect to any tax on income.

(2) 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 (1) (wm) and the annuitant may also direct, in such form as determined by the board, that premiums be deducted for supplementary medical coverage under the federal OASDHI system and such moneys shall be paid to the social security administration.

(3) Any member, beneficiary or distributee of any estate under the state teachers retirement law may waive, absolutely and without right of reconsideration or recovery, the right to, or the payment of all or any portion of, any benefit payable or to become payable under that law.

(4) The board may retain from the appropriate annuity or other benefit such amount as it determines to be required to reimburse the system for any money or moneys paid to any annuitant, member, beneficiary or estate as a result of an inadvertent clerical error, misrepresentation or fraud.

History: 1975 c. 39 s. 734.

42.53 Board, succession. The board shall succeed to and be vested with all the property,

rights, powers and duties, and be subject to all the obligations and liabilities, of the teachers' insurance and retirement fund and of the board of trustees of the teachers' insurance and retirement fund in the administration of said fund and of the state annuity and investment board in the administration of this subchapter.

42.531 Mandatory retirement of state employees in classified service. Any member of the system in the classified service of the state shall be retired at the end of the month in which he attains the age of 65 unless his appointing officer, board or commission specifically authorizes him in writing to continue in employment for a period or periods of not to exceed one year at a time.

42.54 Repeals and reservations. Sections 42.01 to 42.18 of the statutes of 1919 are repealed except that any provisions of said sections fixing the amounts and the conditions of payment of any benefits under this subchapter shall remain in force and may be referred to for determining such conditions and benefits until all such benefits have been fully paid.

SUBCHAPTER II

MILWAUKEE TEACHERS RETIREMENT

42.70 Teachers' retirement fund. (1) FUNDS. A teachers retirement fund is created in each city of the 1st class. The fund shall consist of:

(a) A reserve fund made up of amounts transferred from the state accumulation fund and the retirement deposit fund for the payment of annuities granted pursuant to this subchapter and interest accretions thereto.

(b) A retirement deposit fund made up of member deposits made under s. 42.80 (5a), (6), (7), (8) and (9) and interest accretions thereto.

(c) A state accumulation fund made up of amounts paid under s. 42.71 (1) (e) on behalf of members of the formula group and interest accretions thereto, together with gifts, legacies and amounts received from any other source and amounts transferred pursuant to s. 42.89 (3).

(2) DEFINITIONS. In this subchapter, unless the context clearly requires otherwise:

(a) "Accumulation" means the total resulting from the addition of interest to required deposits, member's deposits, state deposits or additional deposits.

(b) "Director" means the director of the bureau which is responsible for the administration of any retirement fund created under this subchapter.

(c) "Board" means the teachers retirement board in each city of the 1st class.

(d) "Combined group" means the combined group established under s. 42.72.

(e) "Contribution" means a deposit as defined in par. (f) or an OASDHI contribution.

(f) 1. "Additional deposit" means any deposit made in the retirement deposit fund by or on behalf of a member, excluding required deposits and state deposits.

2. "Member's deposit" means any deposit made in the retirement deposit fund by or on behalf of a member, excluding the state deposit.

3. "Required deposit" means the reservation made under s. 42.80 from the salary of a teacher.

4. "State deposit" means the deposit made under s. 42.71 (1) (e) in the retirement deposit fund on behalf of any member.

(g) "Fiscal year" is the year beginning July 1 and ending June 30.

(i) "Interest" means the actual rate earned by deposits.

(j) For purposes of this subchapter "city of the 1st class" means a city which was a city of the 1st class on March 31, 1972.

(k) "Member" means a person who, as the result of having been a teacher as defined in par. (q), has a credit in the retirement deposit fund or a reserve in the reserve fund, or who is or may be entitled to a present or future benefit under this subchapter. For the purposes of s. 42.72;

1. "Active member" means a member who is not receiving an annuity under this subchapter and who has made a deposit in the retirement fund based on earnings after August 31, 1956, or is deemed an active member under s. 42.72 (7), or is on a leave of absence from a teaching position in the public schools of a city of the 1st class.

2. "Inactive member" means a member who is not receiving an annuity under this subchapter, who has not made a deposit in the retirement fund based on earnings after August 31, 1956, and is not on a leave of absence from a teaching position in the public schools of a city of the 1st class.

3. "Retired member" means a member who is receiving an annuity under this subchapter.

4. Each member shall be a member of the separate group or the combined group, upon completion of the procedures under s. 42.72.

(m) "OASDHI" means federal old-age, survivors, disability and health insurance, as provided under Title II of the federal social security act.

(n) "Retirement fund" means a teachers retirement fund in a city of the 1st class.

(o) "School year" means the period beginning on July 1 of any year and ending June 30 of the following year.

(p) "Secretary" means secretary of the board.

(q) 1. "Teacher" means all superintendents, principals, supervisors, welfare workers and attendance officers; all high school teacher-librarians having the qualifications of teachers as provided in the statutes and prescribed by the board of school directors, pursuant to subd. 2 except assistant or clerk librarians; all employees defined as teachers and made eligible to membership and becoming members of the teachers' retirement fund by ss. 42.95 and 42.96; all regular instructors employed in the public schools of such cities, and instructors of instrumental music classes whose positions normally require actual performance of duty for at least 600 hours in each year; but this paragraph shall not affect the election, appointment or tenure of the superintendent, assistant superintendents, special supervisors, part-time instructors of instrumental music classes or substitute teachers.

2. In cities of the 1st class any school librarian employed by the board of school directors on July 4, 1937, in any such city and whose qualifications as a librarian at that time are at least equal to the minimum librarian qualifications prescribed by the state superintendent of public instruction and who, prior to such employment, had not less than one year of experience in teaching in public schools, or in a responsible library position above the rank of page, shall be entitled to the status, rights and privileges of a regular teacher as defined in subd. 1 from and after the beginning of such employment as such school librarian.

(r) "Variable annuity" means any annuity provided by the accumulations in the funds of the variable annuity division resulting from contributions made pursuant to s. 42.76, and constitutes a contract involving life contingencies providing for the dollar amount of benefits or other contractual payments or values under said section to vary so as to reflect differences which may arise between the total value of the annuity reserve for variable annuities and the reserve that would be required if such annuities were fixed annuities.

(s) "Membership teaching" means employment as a teacher in the public schools of a city of the 1st class and shall include any period of teaching service before September 1, 1958, for which a teacher would have received credit under s. 42.81 if he had remained a member of the separate group.

(t) "Final average compensation" means the monthly rate of compensation obtained by dividing 1) the member's total compensation subject to required deposits (including any compensation which would have been subject to required deposits if not exempted pursuant to s. 42.84 (4)) for the 5 fiscal years in which such compensation was the highest during the fiscal years preceding the June 30 nearest the date of termination of his membership teaching by 2) 12 times the number of years of his creditable service for such 5 years. If a member has such compensation for less than 5 such fiscal years his final average compensation is the rate obtained by dividing his total compensation for all such years by 12 times the total number of years of his creditable service therefor.

(u) "Final excess OASDHI compensation" means the monthly rate of compensation obtained by dividing: 1) the member's total compensation for the 5 years or such lesser period determined pursuant to par. (t), in excess of the amounts subject to contributions under subch. VI of ch. 40, by 2) 12 times the number of years of his creditable service for such period, but such monthly rate shall not exceed the amount by which the final average compensation of the member exceeds \$550.

(v) For any annuity determined in accordance with s. 42.78 (2) (c), "final average compensation" means the monthly rate of compensation obtained by dividing 1) the member's total compensation subject to required deposits (including any compensation which would have been subject to required deposits if not exempted pursuant to s. 42.84 (4)) for the 3 fiscal years in which such compensation was the highest during the fiscal years preceding the June 30 following the date of termination of his membership teaching by 2) 12 times the number of years of his creditable service for such 3 years. If a member has such compensation for less than 3 such fiscal years his final average compensation is the rate obtained by dividing his total compensation for all such years by 12 times the total number of years of his creditable service therefor.

History: 1971 c. 40 s. 93; 1971 c. 152 ss. 5, 13m, 38; 1971 c. 211, 214; 1973 c. 20, 90.

Note: Chapter 280, laws of 1975, provides in part: "The Wisconsin retirement fund, the state teachers retirement system and the Milwaukee teachers retirement fund are merged into one public employe retirement system to be known as the Wisconsin retirement system. The employe trust funds board is directed to prepare and submit to the legislature when it convenes in January 1977, a bill to reconcile the statutes with the merger policy declared in this act".

See note to 42.20, citing 62 Atty. Gen. 221.

See note to 111.70, citing OAG 37-78.

42.71 Milwaukee teachers retirement board; powers and duties. Whenever any

member of the board loses the status on which such membership is based, he shall cease to be a member of the board.

(1) The board shall:

(a) Administer the retirement fund.

(b) Transfer the assets of the retirement fund to the state treasurer. Beginning January 1, 1958, the investment board shall have control of the investment and collection of the principal and interest of the retirement fund, investing the funds under s. 25.17.

(c) Receive and consider all applications for annuity under this subchapter, determine the amount thereof and direct payment of such annuities.

(d) Furnish once each year to each member currently making deposits, a statement of his account together with appropriate explanatory material and shall furnish such statement and explanatory material to any other member upon request.

(e) As soon as possible after each July 1, determine the amount of the payment to be made by the board of school directors to such fund during the fiscal year beginning on such July 1, to maintain the assets of the fund as provided in s. 42.89. The board shall certify such amount to the board of school directors which shall pay to the fund each month one-twelfth of said amount, however if such certification is not made before July 31 the first such payment shall be the total amount which would have been transferred if the certification had been made before July 31.

(f) Use the actuary or actuarial firm or independent contractors retained under s. 40.02 for the purpose of carrying out the necessary actuarial or other contractual service requirements of the fund, and employ or select such additional administrative, clerical and other employes as are required for the administration of the fund.

(2) The board may:

(a) Require each teacher employed in the public schools of a city of the 1st class to file a statement in such form as the board directs, concerning all service rendered by such teacher, and such other information as the board needs in the performance of its duties.

(b) Administer oaths, secure by subpoena issued in the name of the board and signed by a member thereof the attendance of witnesses and the production of books, papers and records relevant to any matter pending before the board, and compel witnesses to answer material and relevant questions put concerning any such pending matter. Such subpoena shall be served as prescribed by law and shall be in such form as will advise the witness of the nature of the proceedings in which he is to testify, and the

place and time where and when his testimony is to be given. Each witness so subpoenaed shall receive for his attendance the fees and mileage provided for witnesses in civil cases in circuit courts. When a subpoena is issued on the initiative of the board or a member thereof such witness fees and mileage shall be paid by the board and charged to the administration of the retirement fund. In case of failure of any person to obey the commands of any subpoena lawfully issued or the refusal of any witness to testify before the board to any matter concerning which he may be lawfully questioned, the circuit court or any judge thereof in the county where such board is located, on application by the board or any member thereof, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(c) Deduct from the compensation of each full-time employe of the teachers retirement board in each city of the 1st class who is or becomes a member of the employes' retirement system provided for in chapter 396, laws of 1937, and from every monthly payment of any such employe's compensation after chapter 396, laws of 1937, has become or becomes effective in any such city, the amounts certified to the board by the annuity and pension board mentioned in chapter 396, laws of 1937. Out of the funds administered by it the board may make public contributions to such employes' retirement system for the benefit of such board's employe members of such employes' retirement system in the amounts certified to such board by the annuity and pension board mentioned in chapter 396, laws of 1937. All such deductions and contributions made by such board shall be paid into such employes' retirement system for the purposes mentioned in chapter 396, laws of 1937. All acts of such board and its members, officers, agents and employes in making any such deductions, contributions and payments prior to March 31, 1939, in any such city are ratified and confirmed. This paragraph applies only to employes under sub. (7) (a).

(d) Take such actions as may be necessary to complete the inclusion of the members of the combined group of the retirement fund under the federal OASDHI system as provided in s. 42.72, as of January 1, 1955. The board may employ such additional personnel as may be necessary for such purposes.

1. The board shall certify to the treasurer the amounts to be transferred from the retirement fund to the public employes social security fund to provide for the contributions which will thereby become payable to the federal

OASDHI system as employer and employe contributions for such employes as the result of making such coverage effective as of January 1, 1955, and the board also shall deduct such amounts from the general fund of the retirement fund. Upon such certification by the board the treasurer shall pay such amounts to the public employes social security fund.

2. If the payment of the contributions under subd. 1 is not made to the federal OASDHI system before any interest or penalty accrues thereon under federal regulations as defined in s. 40.40 (4), the board may pay such interest or penalty and charge the same to the interest income of the retirement fund.

(e) Make such investigations of the mortality, disability, service and compensation experience of the several funds as are necessary. On the basis of such investigation the board shall determine, adopt and certify the rates at which the annuities and other benefits shall be granted, but such rates shall be the same for the fixed and variable divisions. No revision of rates shall affect the rights of any beneficiary or annuitant whose benefit was effective prior to the effective date of any such revision. The board may from time to time make such distribution of gains and savings as it deems equitable.

(f) Deduct group life, medical and hospitalization insurance premiums from allowances paid to retired members with the written consent of such member. The consent shall be in such form as is determined by the board and when executed shall be binding upon such retired member.

(3) 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.

(5) The city attorney shall act as the legal advisor of and attorney for the board in all matters referred to him by the board, except as the board otherwise directs.

(6) (a) All teachers employed in the public schools of such cities at the time of the organization of the board desiring to come under this section, shall file a written application therefor and consent thereto with the superintendent of schools, or with the clerk or secretary of the managing body of such schools, together with written authority to the managing body to deduct from each monthly salary due the applicant, the sum or sums hereinafter provided, and to pay the same regularly into the retirement fund as herein provided.

(b) Any person accepting an appointment as teacher, as defined in s. 42.70 (2) (q), in the regular service of such city, after this subchapter takes effect, and serving thereunder, shall, as a

part of the consideration for his employment, be conclusively presumed to have consented to this subchapter.

(c) When 25 or more teachers in such school have consented, a meeting of all such teachers may be called by 5 or more who shall designate the time and place of holding such meeting, and publish notice thereof in such city as a class 2 notice, under ch. 985. Such teachers shall, at such meeting, elect by ballot one female teacher, who shall hold office as trustee for a term of one year, one female teacher, who shall hold office as trustee for a term of 2 years, one male teacher who shall hold office as trustee for a term of one year, and one male teacher who shall hold office for a term of 2 years; and a majority of all the votes cast shall be necessary in each case for an election. Annually, thereafter, at a meeting duly called by the board on the last Saturday of September, one female and one male teacher shall be elected in the same manner for a term of 2 years.

(d) At the next meeting of the managing body of the schools, after the election of such trustees, such body shall elect 2 of its number to be members of the board, for a term of one year, and 2 for a term of 2 years, and annually thereafter at its first regular meeting held after the last Saturday of September, such body shall elect 2 of its number to be members of said board for a term of 2 years. The trustees shall hold office until their successors are elected and qualified.

(7) (a) Persons employed prior to August 1, 1967, by a board under this subchapter are and shall continue to be employes of the city of Milwaukee, subject to related provisions of ch. 15, until such time as the employment of any such person is terminated, but the city of Milwaukee shall be reimbursed from the appropriation under s. 20.515 for all salary and related expenses of such employes, including but not limited to amounts payable by the board under sub. (2) (c).

(b) Persons initially employed on or after August 1, 1967, in furtherance of the purposes of this subchapter shall be employes of the state in the classified service.

(8) Each teachers retirement fund under this subchapter shall be construed to be a trust and each member of a teachers retirement board shall be deemed a trustee.

History: 1971 c. 125, 214; 1973 c. 20, 90; 1977 c. 418.

42.72 Fund divided; referendum on OASDI. (1) **DIVISION INTO GROUPS.** Each retirement fund created under this subchapter is divided into 2 parts known as the separate group and the combined group.

(2) **COMBINED GROUP.** (a) The combined group shall be composed of:

1. Members who indicate in accordance with this section that they desire coverage under an agreement under section 218 of Title II of the federal social security act;

2. Individuals who become members after May 15, 1957; and

3. Inactive and retired members who become active members after said date.

(b) Persons who become members of the combined group under par. (a) 2 and 3 shall do so as of July 1, 1957, or later.

(3) **SEPARATE GROUP.** The separate group shall be composed of all other members.

(4) **INFORMATION AND FORMS TO BE FURNISHED TO MEMBERS.** Not later than May 30, 1957, there shall be mailed or delivered to each person who is an active member on May 15, 1957, information concerning the contributions, benefits and other features of the 2 groups into which the retirement fund is divided under this section, and a form to be signed and returned to the office of the retirement fund by each member who desires to become a member of the combined group. A member who chooses to become a member of the combined group shall thereby elect to become subject to the laws relating to the combined group and the form provided under this subsection shall contain a statement to that effect.

(5) **EVIDENCE OF MAILING.** A list of the names and addresses of all members to whom the materials specified in sub. (4) are mailed or delivered shall be certified and filed with the board and the governor. Upon being filed, the certified list shall constitute prima facie evidence of compliance with sub. (4).

(6) **DELIVERY OTHER THAN MAILING.** In lieu of mailing the materials specified in sub. (4) to individual members, a copy of such materials may be delivered to other responsible persons, who shall deliver such materials to individual members. Such delivery to the individual members may be accomplished personally, by mail, or by means of a regularly constituted institutional or departmental delivery service. A certificate signed by any such person stating that on the dates specified therein he has so delivered such materials to the members named in a list attached to said certificate, when filed with the board, shall constitute prima facie evidence of compliance with sub. (4). Delivery may be made under this subsection as to some members and under sub. (4) as to other members.

(7) **ACTIVE STATUS FOR RETIRED MEMBERS.** (a) Any retired member from whose salary reservations have been made under s. 42.80 based on earnings during 2 or more calendar

quarters after December 31, 1954, shall be deemed an active member if before December 1, 1957, he requests that the annuity he is then receiving be discontinued. Such request shall be made on a form furnished for that purpose by the board, which shall also inform such retired members concerning this section and s. 42.73.

(b) When a person deemed to be an active member under this subsection becomes a member of the combined group, the reserve held in the reserve fund based on the annuity being received by such member, shall be transferred to the general fund until an annuity is again granted to such member. Such reserve shall be based on the member's attained age when such funds are transferred. An annuity subsequently granted to any such member shall be granted in accordance with s. 42.73.

(c) If any member dies after his annuity is discontinued under this subsection and before an annuity is again granted to him, a death benefit shall be paid as provided in s. 42.86. Said benefit shall be the full amount transferred to the general fund under par. (b), reduced by the amounts transferred under sub. (11) as employer and employe OASDHI contributions for retroactive coverage. For purposes of such death benefit a member may file a new designation of beneficiary with the board.

(8) MEMBER TO INDICATE CHOICE. Each member to whom the materials are sent under sub. (4) shall indicate whether he desires to be a member of the separate group or the combined group on the form furnished for that purpose, and mail or deliver said form to the office of the retirement fund. Such form must be received by the board not later than July 4, 1957. Each such member shall enter on such form the address at which he will receive mail, or from which first class mail will be forwarded to him, during the following 120 days.

(9) MEMBERSHIP OF COMBINED GROUP TO BE CERTIFIED. On or before July 19, 1957, there shall be certified to the governor the names and addresses of the members of the combined group, and further certifications shall be made as required by the governor to carry out the procedures under this subsection and subch. VI of ch. 40.

(10) REFERENDUM TO BE HELD. When the certification required under sub. (9) has been made, the governor shall forthwith take all actions necessary for the conduct of a referendum under s. 40.41 (3). If a majority of the members of the combined group vote in favor of coverage under the federal OASDHI system this section shall be fully operative.

(11) OASDHI COVERAGE RETROACTIVE TO JANUARY 1, 1955. Coverage of members of the

combined group under OASDHI shall be effective as of January 1, 1955, or the date on which covered earnings were first paid to any such member, if such date is later. The employer and employe contributions to the public employes social security fund in behalf of such members, for covered employment under OASDHI between January 1, 1955, and the end of the calendar quarter in which the agreement extending such coverage is executed, shall be paid by transferring the amounts necessary to make such payment from the general fund of the retirement fund. Such funds shall be transferred pursuant to s. 42.71 (2) (d).

(12) NATURE OF CONTRACTUAL RIGHTS UNCHANGED. It is not intended that the enactment of chapter 78, laws of 1957, shall extend or impair the nature of any contractual rights of members of the retirement fund.

(14) TRANSFERS FROM SEPARATE TO COMBINED GROUP. (a) The position of any member of the separate group who was eligible to make the choice pursuant to sub. (8) may be transferred to the combined group if prior to the date of execution of any modification to the agreement with the federal department of health, education and welfare made pursuant to s. 40.41 (3) to implement such transfer the board receives from such member not less than 20 calendar days prior to the submission of such modification, a written request for such transfer which specifies the position in the school system of the city of the 1st class in which such member is then employed, and provided such member occupies a position covered under the retirement fund on the date of submission of the modification to the federal department of health, education and welfare. Such written request for a transfer shall be valid only if within 20 days of the receipt of such request by the board the member pays to the board all of the required employe contribution to the federal OASDHI system for employment in such school system which is to be covered from and after January 1, 1958.

(b) Section 42.71 (2) (d) shall be applicable to such transfer and s. 42.80 (6) shall be applicable as of the end of the period of transfer to provide retroactive coverage under s. 42.71 (2) (d).

(c) The director shall certify the number of persons who have qualified to be covered by each modification to be submitted to implement this subsection.

(d) Contributions made and teaching service rendered after August 31, 1958, and before the date of transfer to the combined group under this subsection, except with respect to OASDHI coverage, shall be construed as having been made and rendered under the separate group for all purposes.

(e) For purposes of applying s. 42.73 (1) and (2) to any member who has transferred to the combined group under this subsection the dates contained in s. 42.73 (1) and (2) shall not apply and benefits shall be payable under s. 42.73 (2) for the period before the date of transfer and under s. 42.73 (1) for the period beginning with the date of transfer.

(f) No transfer as provided in this subsection shall be permitted after December 31, 1972.

History: 1971 c. 214.

42.73 Benefits under the combined group. This section applies only to members of the combined group.

(1) RETIREMENT ANNUITIES ON FUTURE SERVICE. When a member of the combined group has ceased to be employed as a teacher in the public schools of a city of the 1st class, and is not on leave of absence from such teaching position, the accumulation from the member's and state deposits made under s. 42.80 (6) based on earnings after August 31, 1958, may be applied by the member as a net single premium at the rate certified by the board, to the purchase of an annuity or annuities, the first payment to be made in such month and year after the application for the annuity is received by the board as the member directs, except that if the total of such annuity added to the annuity payable under sub. (2) and s. 42.76 (12) would be less than \$10 per month, such accumulation may, at the option of the member, be paid to such member in a single sum.

(2) ANNUITY BASED ON PAST SERVICE. In addition to the annuity under sub. (1), an annuity shall be paid for teaching service before September 1, 1958, which annuity shall be determined as follows:

(a) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (1) or (2), the annuity shall be \$2.50 per month for each year of such service not to exceed 35 years.

(b) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (3), the annuity shall be \$3.25 per month for each year of such service not to exceed 35 years.

(c) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (4), the annuity shall be \$4 per month for each year of such service not to exceed 35 years.

(d) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (5), the annuity shall be \$5 per month for each year of such service not to exceed 35 years.

(e) In computing years of service under this subsection a member shall be given credit for years of service before September 1, 1958, for which he would have received credit under s. 42.81 if he had remained a member of the separate group.

(f) If any such member does not qualify for an OASDHI primary or disability benefit, and will not qualify for such benefit upon reaching the age of eligibility, his annuity for teaching service before September 1, 1958, shall be determined as follows: for any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (1) or (2), the annual annuity shall be \$24 for each of the first 25 years of service and \$40 for each additional year of service, but not to exceed \$1,200 per year; for any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (3), the annual annuity shall be \$32 for each of the first 25 years of service and \$85 for each additional year of service, but not to exceed \$1,650 per year; for any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (4), the annual annuity shall be \$45 for each of the first 10 years of service and \$66 for each additional year of service, but not to exceed \$2,100 per year; for any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (5), the annual annuity shall be \$60 for each of the first 10 years of service and \$84 for each additional year of service, but not to exceed \$2,700 per year. The total annuity of such member under sub. (1) and under this subsection, when computed as a straight life annuity, shall be not less than the total annuity for which such member would have been eligible if he had remained a member of the separate group. If such member subsequently qualifies for an OASDHI primary or disability benefit, his annuity for teaching service before September 1, 1958, shall thereafter be determined under pars. (a) to (d); but the total annuity of any member under sub. (1) and this subsection, when computed as a straight life annuity and when added to the OASDHI primary or disability benefit for which such member is eligible shall be not less than the total annuity for which such member would have been eligible if he had remained a member of the separate group.

(3) OPTIONAL FORMS OF ANNUITIES. Annuities paid under subs. (1) and (2) and s. 42.75 (2) may at the option of the member be in any of the forms provided in s. 42.81 (15).

(4) AGE FOR RECEIVING ANNUITY. The first payment of an annuity under this section shall

not be made before the 55th birthday anniversary of the member unless he has qualified for a disability annuity under s. 42.74 (1) or (2).

(5) COMPULSORY RETIREMENT. Any member of the combined group who attains the age of 70 years shall be retired by the board of school directors at the end of the school year in which he reaches age 70 but the board of school directors may permit the employment of a retired teacher of any age to teach as a substitute for a period of not more than 95 days in any one school year without forfeiture of any retirement allowance.

(6) OPTIONAL INTEGRATED ANNUITY. (a) Any member of the combined group who is eligible to receive a retirement annuity under subs. (1) and (2), which annuity is to begin before the member reaches the age of eligibility for an OASDHI retirement benefit, and who has sufficient quarters of OASDHI coverage to qualify for an OASDHI benefit upon reaching the age of eligibility therefor, may with the approval of the board elect in lieu of such annuity to take the actuarial equivalent thereof as:

1. A reduced annuity payable monthly for life; and

2. A temporary annuity payable monthly and terminating at death or with the payment due in the month in which the participant attains the age specified in the application for such annuity.

(b) The purpose of this option is to provide a life annuity and temporary annuity in such amounts that the member's total anticipated retirement benefits from the retirement fund and primary OASDHI will be approximately the same both before and after attainment of the age of eligibility for an OASDHI retirement benefit, assuming that the member has no further wages credited to his account under OASDHI after payment of such annuity begins.

(7) BENEFICIARY OPTIONAL INTEGRATED ANNUITY. (a) The beneficiary of any member of the combined group may with respect to an annuity payable under s. 42.75 (2) or under s. 42.76 (13), which annuity is to begin prior to the beneficiary's 62nd birthday, elect to take the actuarial equivalent thereof as:

1. A reduced annuity payable monthly for life; and

2. A temporary annuity payable monthly and terminating at death or with the payment due in the month in which the beneficiary attains age 62, whichever occurs earlier.

(b) 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 amounts that the beneficiary's total anticipated

monthly retirement benefits from this retirement fund and survivor benefits from the federal OASDHI system will be the same both before and after the attainment of age 62.

History: 1975 c. 94.

42.74 Disability annuities. (1) FUTURE MEMBERS. (a) This section applies only to persons who first become members after August 31, 1958.

(b) If, before attaining age 50, a member who has made required deposits during each of 5 fiscal years and who was employed in teaching or was on leave of absence from teaching in this state, within the 12-month period immediately preceding the occurrence of disability, becomes unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be a long-continued and indefinite duration, and furnishes due proof thereof and that such disability has then existed for 60 days, the member shall be paid an annuity during the continuance of such disability, in monthly payments of \$100 each, in addition to any other benefit payable to such member. The board may at any time not more than once in any year require proof of the continuance of such disability and if the member fails to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in any substantial, gainful activity, such annuity shall cease.

(c) If a member receiving a disability annuity under par. (b) becomes eligible to receive an OASDHI disability or primary retirement benefit the amount of such annuity paid from the general fund shall be reduced by the amount of such OASDHI benefit. If any such member fails to apply for an OASDHI benefit upon reaching the age of eligibility therefor, or fails to pursue any such application in good faith, the portion of such annuity paid from the general fund shall cease.

(d) Each initial determination of disability under par. (b) shall be made by the state agency designated to make determinations of disability by agreement with and for the secretary of health, education and welfare under the federal social security laws. Such initial determination of eligibility may be accepted or rejected by the board. Continued eligibility for benefits under par. (b) shall be determined in the same manner. As a condition of continued payment of the portion of the annuity paid from the general fund, the board may require a member receiving a disability annuity under par. (b) to reapply for an OASDHI disability benefit on the basis of any examination or determination under par.

(b) or to apply for the freezing of his OASDHI earning record on the basis of his disability.

(e) If, before attaining age 55, a member who had made required deposits during each of 5 fiscal years and who was employed in teaching or was on leave of absence from teaching in this state, within the 12-month period immediately preceding the occurrence of disability, becomes physically or mentally incapacitated to such an extent that the member is wholly, and presumably will be permanently, unable to engage in teaching, and furnishes due proof thereof and that such disability has then existed for 60 days, the member shall be paid an annuity during the continuance of such disability, in monthly payments of \$25 each, in addition to any other benefit payable to such member. The board may at any time not more than once in any year require proof of the continuance of such disability and if the member fails to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in teaching, such annuity shall cease.

(f) A member may not receive an annuity under pars. (b) and (e) at the same time.

(2) PRESENT MEMBERS. Any teacher who first became a member before September 1, 1958, upon certification for total and permanent disability as provided in s. 42.81 (6) or temporary disability after 5 years or more of teaching service in the public schools of a city to which this subchapter applies as provided in s. 42.81 (4), may receive an annuity under s. 42.73 (1) increased by such an additional amount so that the total annual disability annuity received by such teacher is as follows:

(a) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (1) or (2), the annual disability annuity shall be \$24 for each of the first 25 years of service and \$40 for each additional year of service, but not to exceed \$1,200 per year.

(b) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (3), the annual disability annuity shall be \$32 for each of the first 25 years of service and \$85 for each additional year of service, but not to exceed \$1,650 per year.

(c) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (4), the annual disability annuity shall be \$45 for each of the first 10 years of service and \$66 for each additional year of service, but not to exceed \$2,100 per year.

(d) For any member from whose salary reservations before September 1, 1958, were last made under s. 42.80 (5), the annual disability annuity shall be \$60 for each of the first 10 years

of service and \$84 for each additional year of service, but not to exceed \$2,700 per year.

(e) When an annuity is increased under this subsection the additional annuity shall be paid by transferring a sufficient amount from the general fund to the reserve fund to establish the reserve required to pay such additional annuity which shall be paid from the reserve fund. Such additional annuity shall be reduced by the amount of any OASDHI primary or disability benefit received by the member.

(f) In computing years of service under this subsection a member shall be given credit for years of service for which he would have received credit under s. 42.81 if he had remained a member of the separate group.

(g) A period of time during which an annuity is paid under this subsection shall not be considered teaching service under this subchapter for purposes of computing retirement annuities.

(3) RESERVES UPON WHICH ANNUITIES ARE BASED. All annuities paid under ss. 42.73 to 42.75 shall be paid from the reserve fund. If the annuity or part thereof is based on an accumulation in the retirement deposit fund the board shall transfer such accumulation from the retirement deposit fund to the reserve fund. If the annuity or part thereof is not based on an accumulation in the retirement deposit fund, the board shall transfer from the general fund to the reserve fund an amount sufficient to establish the necessary reserve to pay such annuity. If the benefit is paid in a lump sum such payment may be made directly from the retirement deposit fund if based on an accumulation in said fund, from the reserve fund if based on a reserve in said fund, and otherwise from the general fund. The board may make such transfers between funds as are necessary to carry out the purposes of this section.

History: 1971 c. 214.

42.75 Benefits. (1) SEPARATION BENEFITS.

Any member who has ceased to be employed as a teacher in the public schools of a city of the 1st class, and is not on leave of absence from a teaching position in such city, may be paid the accumulation from the member's deposits made while a member of the combined group, on filing with the board before the 55th birthday anniversary of such member a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of such member to state deposit accumulations which accrued while a member of the combined group. Withdrawal of member's deposits made before said member became a member of the combined group shall be governed by s. 42.86.

(2) DEATH BENEFITS. The death benefits payable to beneficiaries shall be the full amount

of the accumulation in the retirement deposit fund to the credit of the member from all member's deposits and all state deposits made under s. 42.80 (6), plus an amount which is equal to twice the accumulation which would have resulted from the deposits made by such member under s. 42.80 (1) to (5) if interest had been compounded thereon at the rate of 3% per annum. Such death benefits shall be payable as an annuity or annuities payable monthly during the life of one or more beneficiaries, except that if any such annuity would be less than \$10 per month, the benefit shall be paid to the beneficiary in a single sum. The board may require proof of the death of deceased beneficiaries from the surviving beneficiaries.

(3) INFORMATION ON OASDHI BENEFITS. Each member may be required by the board, as a condition of receiving benefits under s. 42.73 (2) (f) or 42.74 (1) or (2), to authorize the social security administration to provide the fund with information regarding the present or future OASDHI benefits payable or to become payable to such member.

(4) ADDITIONAL ANNUITY OPTIONS. In addition to the optional forms of annuities set forth in s. 42.81 (15), an annuity under s. 42.73 (1) or (2) or 42.74 (1) or (2) may at the option of the member be granted in any form of life annuity established by rule of the board on the basis of actuarial equivalent values, with due regard for selection against the fund. The amount payable monthly to the member during life under any such additional form shall be not less than the amount payable to others upon the death of the member.

History: 1971 c. 307; 1973 c. 20; 1975 c. 282, 421.

42.76 Variable annuities. (1) PURPOSE. The purpose of this section is to establish a well balanced, broadly diversified investment program so as to provide retirement benefits which will fluctuate as the value and earnings of such investments vary, in relation to changes in the general economy. It is anticipated that greater utilization of equity investments will result in the accumulation of larger deposit reserves during the working years of the member and tend to preserve the purchasing power of the deposits made and the benefits provided, and should provide better protection in periods of inflation.

(2) FIXED AND VARIABLE ANNUITY DIVISIONS. There are created within the combined group of the retirement fund, 2 divisions known as the variable annuity division and the fixed annuity division.

(3) DEPOSITS. (a) Each member of the combined group may elect, by written notice filed with the board upon a form furnished by the board, to have 50% of his required deposits and

state deposits paid into the retirement deposit fund of the variable annuity division beginning September 1, 1958, and reserved for the purchase of a variable annuity.

(b) Said election may be made at any time by the member, and shall become effective as to deposits based on earnings after the following June 30 unless the board adopts rules for more frequent elections.

(c) Said election shall have no effect on any benefit under s. 42.73 (2) or 42.74 (2).

(d) Said election, once made, is irrevocable.

(e) In the absence of such election the member shall participate in the fixed annuity division only, and his entire required deposit shall be paid into the retirement deposit fund of the fixed annuity division.

(f) Any member of the combined group who has elected under par. (a) to participate in the variable annuity division may also direct, upon a form furnished by the board, that any or all additional deposits subsequently made by or on behalf of said member be paid into the retirement deposit fund of the variable annuity division, but the maximum amount of such additional deposits paid into such fund shall be \$5,000 per year.

(4) FUNDS. (a) The board shall at all times maintain in the funds of the fixed annuity division assets in accordance with s. 42.89.

(b) The board shall at all times maintain in the funds of the variable annuity division a reserve fund and a retirement deposit fund:

1. The reserve fund shall consist of all transfers made to the reserve fund less payments from the fund -- the total adjusted for net gains and losses and for mortality gains and losses. The annuities paid from this fund shall be adjusted annually so that the value of the total required reserve for these annuities, if they were considered as fixed annuities, would, under the mortality and interest assumptions under which they were issued, be within 2% of the amount of this fund;

2. The retirement deposit fund shall consist of the deposits made by or for the members less withdrawals and transfers from the fund -- the total adjusted for net gains and losses.

(c) The board shall establish and maintain such reserve or surplus funds in the fixed annuity division and in the variable annuity division as the interests of the members and the future solvency of the funds requires. The board shall, as of June 30 of each year, make such valuations of the several funds as are necessary for the purposes of the retirement fund.

(e) The assets in the retirement deposit fund and the reserve fund of the variable annuity division shall be evaluated annually by the board at a date fixed by the rules of the board. The

market value of investments used in this evaluation shall be the value certified by the investment board. The board may make additional evaluations of the fund at times between the annual evaluation if deemed desirable.

(5) EARNINGS; APPORTIONMENT AND CREDITING. (a) *Earnings.* The earnings of the funds of the variable annuity division and the fixed annuity division shall consist of that portion of the distributions under s. 40.06 (3) which is due to such items as dividends, rents, interest payments and other income derived from investments rather than from changes in capital value of investments.

(b) *Apportionment.* As of June 30 of each year the board shall determine the earnings of the several funds of the variable annuity division and the fixed annuity division.

(c) *Crediting.* Earnings will be credited to individual accounts in the retirement deposit fund only when a member's deposit accumulation, and state deposit accumulation, are transferred to the reserve fund. In such instances interest shall be credited to the amount to be so transferred for each one-month period which has elapsed since the preceding June 30 at one-twelfth of the rate at which earnings were calculated on such June 30. The interest so credited shall be charged to the earnings for the current fiscal year and shall be transferred with the amount to which it was so credited. No interest shall be credited to an account on a pro rata basis where a refund of contribution is paid out in a single sum.

(6) NET GAINS AND LOSSES. (a) *Net gains.* Net gains or losses for any period shall be the amount received from the distribution under s. 40.06 (3) during the period.

(b) *Apportionment.* As of June 30 of each year the board shall determine the net gains or losses to be apportioned to the several funds.

(c) *Crediting to accounts.* Net gains and losses will be credited to the individual accounts in the retirement deposit fund only on amounts that have been on deposit for the full year, except that the board may, in order to avoid substantial inequities in case of extraordinary gains or losses, allocate a portion of these to deposits made during the current year.

(7) BOARD TO FIX ANNUITIES. The board shall make such investigations of the mortality, disability, service and compensation experience of the several funds as are necessary. On the basis of such investigation the board shall determine, adopt and certify the rates at which the beginning payment on variable annuities shall be made. The rates last adopted by the board shall continue to be the prevailing rates until changed by action of the board.

(8) ADJUSTMENT OF VARIABLE ANNUITY PAYMENTS. Whenever the balance in the reserve fund of the variable annuity division as of June 30 of any year exceeds or is less than the present value of all variable annuities in force, determined in accordance with the rate of interest and approved actuarial tables then in effect, by at least 2% of said present value, the amount of each variable annuity payment shall be proportionately increased or decreased effective on a date determined by the board.

(9) INTERIM ADJUSTMENTS. The board may, in order to avoid substantial inequities, in the event of extraordinary fluctuation in the market value of the investments, make a determination and adjustment of annuities as provided in sub. (8) at times other than June 30.

(10) SEPARATION BENEFITS. Any member who has ceased to be employed as a teacher in the public schools of a city of the 1st class, and is not on leave of absence from such teaching position, may be paid the accumulation from the member's deposits made in or transferred to the variable annuity division, on filing with the board before the 55th birthday anniversary of such member a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of such member to state deposit accumulations which accrued in the variable annuity divisions as the result of state deposits made in the variable annuity division while he was a participant therein. Withdrawals of accumulations from member's deposits in the fixed annuity division shall be governed by s. 42.75 (1).

(11) OTHER RIGHTS. Other rights and benefits shall be as nearly consistent with this subchapter as the board determines to be practicable considering the nature of the benefits under the variable annuity division.

(12) ANNUITIES. (a) When a member has ceased to be employed as a teacher in the public schools of a city of the 1st class, and is not on leave of absence from such teaching position, the accumulation from the member's deposits and state deposits may be applied by the member as a net single premium at the rate certified for beginning payments by the board, to the purchase of a variable annuity, the first payment to be made in such month and year after the application for the variable annuity is received by the board as the member directs, which variable annuity may be:

1. A variable annuity payable monthly to the member during life; or
2. A variable annuity payable monthly to the member during life, with a guaranty of at least 180 monthly payments; and in the event of the

death of the member before 180 monthly payments have been made, the remainder of the 180 monthly payments shall be continued to one beneficiary or divided equally, or as the member otherwise specified, between 2 or more beneficiaries designated by the member until payments have been made for 180 consecutive months after such annuity began. Upon the death of any designated beneficiary after he has become entitled to receive monthly payments under this subsection, the then present value of his benefit shall be paid in a single sum to his estate. Upon the death of the member before payment has been made for 180 months, the then present value of the remainder of such payments shall be paid in a single sum to the estate of the member in cases where no beneficiary was designated or where the member's estate was designated as beneficiary. In the event of the death of any designated beneficiary prior to the death of the member, then upon the death of the member, the then present value of the benefit, if any, which would have been payable to said beneficiary, shall be paid in a single sum to the estate of the member; or

3. A variable annuity payable monthly to the member during life, and after death of the member, monthly payments of one-half the monthly amounts which would have been paid to the member if he had lived, to be continued to such beneficiary during life as the member has designated in the original application for a retirement allowance; or

4. A variable annuity payable monthly to the member during life, and after the death of the member, the same monthly payment which would have been paid to the member if he had lived; to be continued to such beneficiary during life as the member has designated in the original application for a retirement allowance; or

5. In such variable life annuity or annuities as the board approves, but the amount payable monthly to others upon the death of the member shall not be more than the amount which would have been payable monthly to the member if he continued to live.

(b) The first payment of an annuity under this subsection shall not be made before the 55th birthday anniversary of the member unless he has qualified for a disability annuity under this subchapter.

(c) If the total of any such annuity, when added to the annuity payable under s. 42.73 (1) and (2), would be less than \$10 per month, the accumulation from member's deposits and state deposits may, at the option of the member, be paid to such member in a single sum.

(13) DEATH BENEFITS. Each member may, by written notice to the board in such form as it approves, designate a sole beneficiary, or 2 or

more beneficiaries to whom any death benefits payable at the death of the member shall be paid. The member may by a like written notice change any such designation. Such death benefits shall be the full amount of the accumulation in the retirement deposit fund of the variable annuity division to the credit of the member from all member and state deposits. Such death benefits shall be payable as a variable annuity or annuities payable during the life of one or more beneficiaries. If the initial amount of such variable annuity payable to any beneficiary would be less than \$10 per month the benefit payable to such beneficiary shall be paid in a single sum or, if the beneficiary so elects, shall be transferred to the retirement deposit fund of the fixed annuity division and paid under s. 42.75 (2). If more than one beneficiary is designated and any of such designated beneficiaries predecease the member, the death benefit shall, unless the member has designated otherwise, be paid to the surviving beneficiaries in equal shares. The board may require proof of the death of deceased beneficiaries from the surviving beneficiaries. If no beneficiary has been designated by the member, or if no designated beneficiary survives the member, such death benefit shall be paid in a single sum to the estate of the member. If the designated beneficiary survives the member, but dies before making application for or receiving any benefits under this subchapter, such death benefit shall be paid in a single sum to the estate of the deceased beneficiary upon the application of the executor or administrator of such estate.

History: 1971 c. 125, 214; 1973 c. 137

42.77 Creation of formula group; election by members. (1) There is created, as of September 9, 1965, as a part of each retirement fund created pursuant to this subchapter a formula group, to be composed of: a) any combined group or separate group member, except any member who on such date is a member receiving an annuity, who at any time on and after September 9, 1965, but prior to December 1, 1965, is employed in membership teaching and, unless exempted from making a required deposit by s. 42.84 (4), makes a required deposit pursuant to s. 42.80, and who elects in accordance with this section to become a member of the formula group; b) any combined group or separate group member who on September 9, 1965, is on authorized leave of absence, and who elects in accordance with this section to become a member of the formula group, but no such election shall be effective unless and until such member resumes membership teaching concurrently with the termination of such leave of absence; c) any member who is a member of the

system on September 9, 1965, but who is not eligible for an election under a) or b) herein, who within 90 days from the last day of the month in which he first engages in membership teaching after September 9, 1965, elects in accordance with this section to become a member of the formula group, but his participation as a member of the formula group shall not include or relate to any benefit, compensation or employment for any period prior to September 9, 1965; d) any person who becomes a member of the system after November 30, 1965. For purposes of subch. VI of ch. 40 each member of the formula group shall also be classified as a member of the combined group or of the separate group, as determined pursuant to s. 42.72; such classification shall also be applicable with respect to any benefit, compensation or employment which is not includable for formula group purposes.

(2) (a) Not later than January 1, 1966, there shall be mailed or delivered to each member who is eligible for the election specified in sub. (1) a) or b), comparative information concerning the required deposits, benefits and other features applicable to members of the formula group and to the members of the group to which such member then belongs, together with an envelope addressed to the retirement fund and a form to be signed and returned to the retirement fund by each member who desires to become a member of the formula group. A member who elects to become a member of the formula group shall thereby become subject to the laws relating to the formula group, and such election shall constitute a modification of the terms and conditions of employment of such member; and the form provided herein shall contain a statement to such effect. To be effective, the election form of any member must be received by the office of the retirement fund no later than the close of business on April 1, 1966, but the board may provide for a reasonable extension of such date in individual cases on the basis of unusual or extenuating circumstances; no such extension shall be effective after June 30, 1967. The board may prescribe and take all actions necessary to assure compliance with the expressed intent of this subsection, which is to assure all eligible members an opportunity to make an informed election of membership in the formula group.

(b) Participation in the formula group shall not be effective, as to any member who becomes a member of such group, before July 1, 1966, or the beginning date of his retirement annuity under s. 42.78 (2) if earlier.

(3) (a) Beginning on May 11, 1973 the formula group shall include every member who on or after such date is engaged in membership

teaching and who makes a required deposit pursuant to s. 42.80, or who until July 1, 1973, is exempted from making deposits under s. 42.84 (4). For purposes of subch. VI of ch. 40, each member of the formula group shall also be classified as a member of the combined group or of the separate group as determined pursuant to s. 42.72.

(b) For any combined group member or separate group member who becomes a member of the formula group on or after May 11, 1973, any formula annuity, disability annuity under s. 42.78 (3), or death benefit under s. 42.78 (5) (b) shall be reduced by the amount of annuity or other benefit that could be provided by the aggregate of the following amounts, together with interest thereon compounded at the rate of interest credited to member fixed division accounts for each full fiscal year between June 30, 1973, and the effective date of such annuity or other benefit:

1. For members of the combined group:
 - a. For the fiscal year ending June 30, 1967, 2.5% of the amount of compensation for such year which is in excess of \$6,600.
 - b. For the fiscal year ending June 30, 1968, 2.5% of the amount of compensation for such year which is in excess of \$7,200.
 - c. For the fiscal years ending June 30, 1969, to June 30, 1971, 2.5% of the amount of compensation for each of such fiscal years which is in excess of \$7,800.
 - d. For the fiscal year ending June 30, 1972, 2.5% of the amount of compensation for such year which is in excess of \$8,400.
 - e. For the fiscal year ending June 30, 1973, 2.5% of the amount of compensation for such fiscal year which is in excess of \$9,900.
2. For members of the separate group the following amounts reduced by actual deposits under s. 42.80 (1) to (5) and (9):
 - a. For the fiscal year ending June 30, 1967, 4.5% of the amount of compensation for such fiscal year plus 2.5% of such compensation which is in excess of \$6,600.
 - b. For the fiscal year ending June 30, 1968, 4.5% of the amount of compensation for such fiscal year plus 2.5% of such compensation which is in excess of \$7,200.
 - c. For the fiscal years ending June 30, 1969, to June 30, 1971, 4.5% of the amount of compensation for each of such fiscal years plus 2.5% of such compensation which is in excess of \$7,800 in each such fiscal year.
 - d. For the fiscal year ending June 30, 1972, 4.5% of the amount of compensation for such fiscal year plus 2.5% of such compensation which is in excess of \$8,400.
 - e. For the fiscal year ending June 30, 1973, 4.5% of the amount of compensation for such

fiscal year plus 2.5% of such compensation which is in excess of \$9,900.

(c) Subsection (1) c) shall not apply to any member who qualifies under par. (a), but any such member shall be subject to par. (b) as to any full fiscal year during which he was a member of the combined group or the separate group.

History: 1973 c. 20, 243.

42.78 Benefits under the formula group.

This section shall apply only to members of the formula group. Benefits provided under this section are inclusive of the benefits provided by accumulations under s. 42.76.

(1) CREDITABLE SERVICE. (a) Creditable service shall be expressed in years and such fractions thereof as the board determines. The creditable service of each member at any time prior to July 1, 1966, shall be the number of years of membership teaching creditable to him pursuant to the applicable statutes and rules. The creditable service of a member with respect to teaching after June 30, 1966, shall be the number of years and completed months of subsequent membership teaching until his employment is terminated. The board shall determine by rule how much teaching in any year is equivalent to one year of creditable service.

(1a) MILITARY CREDIT. Creditable service for active service in the U.S. armed forces after June 30, 1966, shall be granted as provided in s. 40.80, determined and credited as follows:

(a) Creditable service shall be credited as of the date of return to employment in accordance with s. 40.80 (1) (c).

(b) Any member who is not a formula group member or a separate member shall receive, upon filing an application for a retirement or disability annuity, in lieu of creditable service, state deposit credits in an amount equal to the present value of the formula annuity which would be provided if such creditable service had been applied to the computation of a formula annuity.

(2) RETIREMENT ANNUITIES. (a) When a member of the formula group has ceased membership teaching and is not on authorized leave of absence from membership teaching, he may elect to receive a retirement annuity, the first payment of which shall not be made before the member's 55th birthday.

(b) The retirement annuity in the normal form of a formula group member, except as provided in pars. (c) and (d) or in s. 42.77 (3) (b), shall be in the monthly amount equal to the sum of the amounts determined pursuant to this paragraph, plus any benefit elected by such member to be provided by his accumulated additional deposits:

1. The annuity purchased by applying as a net single premium, the amount equal to 200% of the excess if any, of a) the accumulation from the required deposits of the member over b) the accumulation therefrom which would have resulted if the accumulation therefrom in the variable annuity division on June 30, 1966, had been transferred to, and all subsequent deposits had been made in, the fixed annuity division. If a) is less than b), the annuity of the member shall be reduced by the amount which could be purchased by 200% of the amount of the deficiency, plus:

a. If the annuity begins on or after the 65th birthday of the member, the monthly annuity in the normal form determined by multiplying the number of years of his creditable service by the sum of six-sevenths of one per cent of his final average compensation plus three-sevenths of one per cent of the final excess OASDHI compensation of the member; or

b. If the annuity begins prior to the 65th birthday of the member, the annuity determined pursuant to subd. 1. a but reduced as recommended by the actuary and approved by the board by a percentage of the amount thereof for each month or major portion thereof between the beginning date of his annuity and the date of his 65th birthday.

2. The initial amount of annuity in the normal form under this paragraph 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 federal OASDHI program, equals 75% of the member's final average compensation. If a member 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 member fails to establish the amount of, or his eligibility for, such OASDHI benefits, determinations thereof shall be made by the board on such basis as the board establishes by rule.

(bm) The board of school directors may elect that the date used for determining amounts under par. (b) 1. a and b shall be the 62nd birthday of the member, rather than the 65th birthday of the member, for its employees voluntarily applying for a retirement annuity prior to January 1, 1983, for the purpose of calculating that annuity only, except:

1. This paragraph shall apply only to employees who voluntarily terminate their employment after the date on which the board of school directors elects under this paragraph and prior to January 1, 1983.

2. The board shall pay to the department of employe trust funds the difference, as determined by the department, between the actuarial cost of the annuity which would have been paid if the board of school directors had not elected under this paragraph and the actual cost of the annuity payable. The amount payable shall be paid to the department in 3 equal annual payments, plus interest at the effective rate. Each annual payment shall be due and shall be included with the first payment made in each fiscal year under ss. 42.71 (1) (e) and 42.89 in each fiscal year after the annuity effective date. The amount so paid shall be credited as employer normal current service contributions.

(c) The retirement annuity in the normal form of a formula group member, except as provided in pars. (b) and (d) or in s. 42.77 (3) (b), who on or after May 11, 1973 is engaged in membership teaching and who makes a required deposit pursuant to s. 42.80, or who until July 1, 1973, is exempted from making required deposits under s. 42.84 (4) shall be in the monthly amount equal to the sum of the amounts determined pursuant to par. (b), except that:

1. The amount determined under par. (b) 1. a shall be determined by multiplying the number of years of his creditable service by 1.3% of his final average compensation.

2. The 75% limitation on combined annuity and OASDHI benefits in par. (b) 2 shall be increased to 80%.

(d) The retirement annuity in the normal form of a formula group member shall be the amount determined pursuant to par. (b), (c) if eligible therefor, or this paragraph, whichever results in the largest initial annuity. The annuity under this paragraph shall be the annuity purchased by applying as a net single premium the sum of the following, plus any annuity elected by such member to be provided by his accumulated additional deposits:

1. The accumulation from the member's required deposits made pursuant to s. 42.80 (6) to (9).

3. An amount equal to the accumulation from a member's required deposits made pursuant to s. 42.80 (6) to (9).

5. The present value as of the date of annuity purchase of any annuity payable pursuant to ss. 42.72 (14) (e) and 42.73 (2), but not including the present value of any such annuity based on service after June 30, 1966.

(e) The normal form of retirement annuity is an annuity payable monthly during life, with a guaranty of at least 60 monthly payments. A member may elect to receive in lieu of the normal form of annuity an actuarially equivalent annuity in any optional form provided in this subchapter. The excess of the total

annuity to which a member is entitled under this section over the initial amount of the variable annuity hereunder, when both are computed in the normal form, shall be the annuity payable from the fixed annuity division.

(f) Two annuities shall be deemed to be actuarially equivalent if both require the same net single premium on the date as of which the determination is made.

(g) This section shall be effective with respect to any retirement annuity provided herein if application therefor is filed after September 9, 1965, and if the beginning date of such annuity is after such effective date, but until July 1, 1966, each such retirement annuity shall be determined and paid as provided by the law in effect as to any member prior to September 9, 1965. As soon as possible after July 1, 1966, each such retirement annuity shall be increased to the amount determined pursuant to this section, subject to the same optional modification if any as was applied to the original retirement 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 member.

(h) The compulsory retirement provision of s. 42.73 (5) shall be fully applicable to formula group members.

(i) Notwithstanding s. 42.77 (1), an election to become a member of the formula group may be made at any time prior to December 1, 1965, by any member who made a required deposit pursuant to s. 42.80 based on teaching service in the month of May or June, 1965, and who had not received an annuity at any time prior to May 1, 1965. The election permitted by this paragraph may also be made by any member who would have made a required deposit pursuant to s. 42.80 based on teaching service in May or June, 1965, if not exempted from making such deposit by s. 42.84 (4), if such election is made not more than 60 days after July 8, 1966. Any member so electing shall be subject to all provisions applicable to members of the formula group, including the right to have his retirement annuity adjusted in accordance with par. (g), any provision thereof to the contrary notwithstanding.

(j) If the formula group retirement annuity of a member of the combined group who became a member of the formula group on or before May 11, 1973 is less than the amount to which such member would have been entitled under s. 42.73, the formula group retirement annuity shall be increased to such amount.

(k) Notwithstanding s. 42.78 (intro.), this paragraph shall apply to a member of the

formula and separate group who has attained the age of 55 years, has ceased membership teaching, is not on authorized leave of absence from membership teaching, and who is entitled to an annuity or annuities commencing immediately.

1. If the retirement annuity in the normal form from all available accumulations and credits, other than accumulations from voluntary additional deposits, is less than \$10 monthly, such retirement annuity shall not be paid, but in lieu thereof the then present value of such retirement annuity shall be paid in a single sum.

2. Except as provided in subd. 1, if the retirement annuity in the normal form from all available accumulations and credits, other than accumulations from voluntary additional deposits, is less than \$25 monthly, any member may elect to receive, in lieu thereof, the then present value of such retirement annuity in a single sum.

(3) DISABILITY ANNUITIES. (a) If, before attaining age 65, a formula group member who has made required deposits for not less than a school year during each of 5 fiscal years within the 84-month period preceding the occurrence of disability, becomes unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, and furnishes due proof thereof, and if the teaching service of the member was terminated because of such disability, such member shall be paid a disability annuity during the continuance of such disability. The teaching service of a member shall not be considered to have been terminated because of disability if a member has engaged in any employment other than membership teaching between the date the disability occurred and the date of approval by the board of his application for a disability annuity. The board may at any time, but not more than once in any fiscal year, and only until the member has attained age 65, require proof of the continuance of such disability, and if the member fails to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in any substantial gainful activity, such annuity shall be reduced to the amount of the retirement annuity to which he would be entitled under sub. (2), notwithstanding the age 55 requirement expressed therein.

(b) The amount of a disability annuity under this subsection shall be the greater of the following:

1. The amount of the retirement annuity to which the member would be entitled under sub. (2), notwithstanding the age 55 requirement expressed therein, or

2. The sum of the amount of the annuity that can be purchased by the accumulation from additional deposits on the date the disability annuity begins, if the member so elects, plus the lesser of the following amounts: 50% of the final average compensation, or 1.3% of the final average compensation multiplied by the number of years of creditable service, including in the latter assumed service between the date the disability occurred and the 65th birthday of the member. Any annuity payable under this subsection shall not be subject to optional modification. All available required deposit accumulations, state deposit accumulations and state contributions shall be applied to the cost of any annuity provided under this subsection.

(c) Each initial determination of disability under this subsection shall be made by the state agency designated to make determinations of disability by agreement with and for the secretary of health, education and welfare under the federal social security laws. Such initial determination of eligibility may be accepted or rejected by the board. Continued eligibility for benefits under this subsection shall be determined in the same manner.

(d) This subsection shall not be effective as to any disability which occurred prior to July 1, 1966. Payment of a disability annuity under this subsection shall be effective as of the first day of the month following the month in which the disability occurred, as determined by the board, but no payment shall be made for any period more than 60 days prior to the receipt by the board of a written application, on a form prescribed by the board, for such disability annuity. Such application shall be completed by the member or, if the member is incapacitated, by any person on behalf of the member.

(4) LIMITED DISABILITY ANNUITIES. If, before attaining age 55, a formula group member who has made required deposits for not less than a school year during each of 5 fiscal years, and who was employed in membership teaching or was on authorized leave of absence from membership teaching within the 12-month period immediately preceding the occurrence of disability, becomes physically or mentally incapacitated to such extent that the member is wholly, and presumably will be permanently, unable to engage in teaching, and furnishes proof thereof and that such disability has then existed for 60 days, the member shall be paid a life annuity during the continuance of such disability, in monthly payments of \$25 each, in addition to any other benefit which would be payable to such member pursuant to sub. (2) in the absence of the age 55 limitation expressed in sub. (2) (a). The board may at any time, not more than once in any year, require proof of the

continuance of such disability and if the member fails to furnish satisfactory proof thereof, or if it appears at any time that the member has become able to engage in teaching, the \$25 monthly annuity payment provided herein shall cease. A member shall not receive an annuity under sub. (3) and this subsection at the same time.

(5) DEATH BENEFITS. (a) The death benefit payable to a beneficiary shall be the full amount of the accumulation in the retirement deposit fund to the credit of the member from the member's deposits under s. 42.80 (5a) to (9), plus:

1. An amount which is equal to twice the accumulation which would have resulted from the deposits made by such member under s. 42.80 (1) to (5) prior to July 1, 1973, if interest had been compounded thereon at the annual rate of 3% per annum, and

2. An amount which is equal to the accumulation on June 30, 1966, from state deposits made under s. 42.80 (6), compounded to the end of the last completed calendar month preceding his death at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year, provided that any accumulation on June 30, 1966, from state deposits in the variable annuity division shall be so compounded at the respective rates of earnings and capital gains and losses credited to individual accounts in the variable annuity division.

3. In the case of death after May 11, 1973 of a member of the formula group who was a member of the system on June 30, 1966, the amount under subd. 2 shall be determined as the amount which is equal to the accumulation at June 30, 1973, or at the date of death of the member if earlier, from state deposits made on the member's behalf, compounded to the end of the last completed calendar month preceding death at the respective rates of interest credited to individual accounts in the fixed annuity division from year to year, provided that any accumulation on June 30, 1973, from state deposits in the variable annuity division shall be so compounded at the respective rates of earnings and capital gains and losses credited to individual accounts in the variable annuity division. For purposes of this paragraph the accumulation from state deposits at June 30, 1973, is deemed to include an amount equal to the accumulation from a member's required deposits for membership teaching during the period July 1, 1966, through June 30, 1973.

(b) Upon the death, after June 30, 1966, of a member age 60 or more of the formula group while employed in membership teaching, or while on authorized leave of absence from membership teaching, and if such member has not

previously been granted an annuity under this subchapter, there may be paid in lieu of any other benefit under this subchapter a death benefit as follows:

1. If the beneficiary to whom a death benefit is payable is a spouse, child under age 21 or child age 21 or older if handicapped (including a legally adopted child or a stepchild), or other dependent of such member, as determined by the board, or a trust in which such beneficiary has a beneficial interest, a benefit having a present value at the day following the date of death of such member of the life annuity to the beneficiary which would have been payable if such member had been eligible to receive a retirement annuity beginning on the date of his death and had elected to receive such annuity in the optional form provided under s. 42.81 (15) (b) 1.

2. If there is more than one such designated beneficiary, the amount of such annuity and its present value shall be determined as if the oldest of such beneficiaries were the sole beneficiary.

(c) Upon the death of a formula group member receiving a disability annuity under sub. (3), a death benefit shall be payable to his beneficiary in the amount of the excess, if any, of the accumulations from member deposits applied to provide the annuity over the aggregate amount of annuity payments received by the member. If the beneficiary or beneficiaries to whom a death benefit is payable is a spouse, minor child (including stepchild or legally adopted child), or a trust in which such beneficiary has a beneficial interest, the death benefit shall not be less than:

1. If such death occurs prior to the 65th birthday of the member the present value, at the date of such death, of the annuity (terminating in the case of a minor child at the end of the month in which he reaches the age of 21) in the normal form of the monthly amount to which such beneficiary would have become entitled under par. (a) if such 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 subsection, the \$10 minimum annuity provision in par. (a) shall be disregarded and present values shall be determined at the rate certified by the board; or

2. If such death occurs on or after the 65th birthday of the member, the excess, if any, of the accumulations from member deposits applied to provide the annuity over the aggregate amount of annuity payments received by the member after his 65th birthday.

(d) The payment of any death benefit under this subsection shall be subject to optional modification under s. 42.73 (7).

(6) **SEPARATION BENEFITS.** Any formula group member who has ceased membership teaching and is not on authorized leave of absence from membership teaching shall be paid the accumulation from the member's required and additional deposits, including the amount paid by the member pursuant to s. 42.80 (1) to (5), the total reduced by any amount transferred to the public employes social security fund for the payment of employe retroactive social security contributions pursuant to s. 42.71 (2) (d), upon filing with the board, before the 55th birthday of the member, a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of the member to state deposit accumulations and to any benefit arising under this subchapter.

(7) **RESERVES UPON WHICH ANNUITIES ARE BASED.** All annuities paid under this section shall be paid from the reserve fund. If the annuity or part thereof is based on an accumulation in the retirement deposit fund, the board shall transfer such accumulation from the retirement deposit fund to the reserve fund. If the annuity or part thereof is not based on an accumulation in the retirement deposit fund, the board shall transfer from the state accumulation fund to the reserve fund an amount sufficient to establish the necessary reserve to pay such annuity. If the benefit is paid in a lump sum such payment may be made directly from the retirement deposit fund if based on an accumulation in said fund, from the reserve fund if based on a reserve in said fund, and otherwise from the state accumulation fund. The board may make such transfers between funds as may be necessary to carry out the purposes of this section.

(8) **VARIABLE ANNUITIES.** Except as provided in this section, s. 42.76 shall be applicable to formula group members.

(a) Each member of the formula group may elect, by written notice filed with the board upon a form furnished by said board, to have 50% of his required deposits and not to exceed \$5,000 in any fiscal year of his additional deposits, paid into the retirement deposit fund of the variable annuity division. With respect to members who so elect or who made such an election prior to becoming members of the formula group, there shall concurrently be paid into the state accumulation fund of the variable annuity division an amount equal to the amount of each required deposit paid into the retirement deposit fund of the variable annuity division after June 30, 1966.

(b) The retirement deposit fund after June 30, 1966, shall not include deposits or payments made by the state for formula group members. On July 1, 1966, there shall be established for the purpose of providing variable annuity benefits for members of the formula group the state accumulation fund of the variable annuity division in the amount equal to the aggregate amount of the accumulations from required deposits of all such members in the variable annuity division. Net gains and losses shall be credited to the state accumulation fund of the variable annuity division at the same time and in the same amounts as such net gains and losses are credited to individual accounts in the retirement deposit fund of the variable annuity division with respect to accumulations of required deposits which are subject to this section.

(c) The excess of the total annuity payable under this section over the initial amount of variable annuity payable, when both are computed in the normal form, will be paid as a fixed annuity.

History: 1971 c. 125, 214; 1973 c. 20, 137; 1975 c. 189, 282, 357, 421; 1977 c. 418

42.79 Election of formula group benefits by members of separate group.

(1) Any separate group member who is eligible to elect to participate in the formula group under s. 42.77, and who so elects, or who becomes a formula group member pursuant to s. 42.77 (3), shall be subject to all laws and rules applicable to the formula group, but he shall not be required to become subject to social security coverage. Each such separate group member shall also be subject to the following:

(a) For purposes of determining the amount of any benefit, with respect to each such member, it shall be assumed that the member is and was subject to subch. VI of ch. 40, and that the social security benefit expectancy of such member is the same as that of a combined group member with the same salary and service experience, and the same age, whose social security coverage was effective January 1, 1955.

(d) Each such member may elect to participate in the variable annuity division to the same extent and under the same procedures as other formula group members.

(e) The initial amount of retirement annuity of each separate group member who becomes a member of the formula group, and who on or after September 9, 1965, becomes subject to subch. VI of ch. 40, shall be the amount determined pursuant to s. 42.78 (2) reduced by the annuity in the normal form which could be purchased by:

1. If determined pursuant to s. 42.78 (2) (b) or (c), the total amount transferred to pay

retroactive social security contributions with respect to such member; or,

3. If determined pursuant to s. 42.78 (2) (d), one-half of the amount so transferred, but excluding any amount by which the amount specified in s. 42.78 (2) (d) 3 was reduced by reason of such transfer.

(f) If the amount of the retirement annuity of a member of both the separate and formula groups is less than the amount to which such member would have been entitled under s. 42.81 (17) (a) 3 and (b), the annuity shall be increased to such amount.

History: 1971 c. 125; 1973 c. 20.

42.80 Collection of fund. (1) Except as otherwise provided in sub. (2), beginning with the monthly payment of teachers' salaries in November, after the first meeting of the board the board of school directors shall reserve from the salary of each teacher who has come under this subchapter, and from every monthly payment thereafter, the sum of \$2 for the first 10 years of service, the sum of \$3 for the next 5 years of service, and thereafter the sum of \$4, and shall pay the sum so reserved into the retirement fund. Any teacher in the service at the time sub. (2) takes effect in any such city, and from whose salary reservations or deductions are made in accordance with this subsection, may, on or before November 1 in the year following the year in which sub. (2) takes effect in any such city, elect in writing to have the board of school directors reserve from the salary of such teacher the amounts provided for in sub. (2), and whenever such election is made by any such teacher, the granting of an annuity to such teacher under this subchapter shall be governed by and contingent upon s. 42.84 (2). Whenever any such teacher makes such election, any refunds to any such teacher under this subchapter shall be governed by s. 42.86 (2). Except as provided in s. 42.92, every teacher employed in the public schools of any such city at the time this subchapter becomes operative in any such city, and who shall not have come under its provisions on or before November 1, 1917 (in the case of public school teachers of any such city in which a public school teachers' retirement fund has been established), or, on or before the expiration of 2 years after this subchapter has become operative in such city (in the case of public school teachers of any such city in which this subchapter becomes operative), shall be forever barred from coming under this subchapter.

(2) Beginning with the first monthly payment of teachers' salaries after September 1 in the year in which this subsection takes effect in any such city, the board of school directors shall

reserve from the salary of each teacher who enters the teaching service after this subsection takes effect in any such city, and from the salary of each teacher who has come under this subsection after this subsection takes effect in any such city, and from every monthly payment thereafter, the sum of \$4 for the first 10 years of service, the sum of \$6 for the next 5 years of service, and thereafter the sum of \$8, and shall pay the sum so reserved into the retirement fund. After written election, as provided by sub. (1), by any teacher to have reservations from such teacher's salary made in accordance with this subsection, beginning with the first monthly payment of any such teacher's salary after such election, the board of school directors shall reserve from the salary of each such teacher, and from every monthly payment thereafter, the sum of \$4 for the first 10 years of service, the sum of \$6 for the next 5 years of service, and thereafter the sum of \$8, and shall pay the sum so reserved into the retirement fund. The granting of an annuity to any teacher from whose salary reservations are made in accordance with this subsection, shall be governed by and contingent upon s. 42.84 (2), and the payment of any refunds to any such teacher under this subchapter shall be governed by s. 42.86 (2).

(3) Beginning with the first monthly payment of teachers' salaries after September 1, 1945, in any such city, the board of school directors shall reserve from the salary of each teacher who enters teaching service, and from the salary of each teacher who elects to come under this subsection, and from every monthly payment thereafter, the sum of \$7 for the first 10 years of service, the sum of \$11 for the next 5 years of service, and thereafter the sum of \$15 but such reservations shall be limited to 10 in any school year, and shall pay the sums so reserved into the retirement fund. Any teacher from whose salary reservations or deductions have been made under s. 925-xx or sub. (1) or (2) may elect in such manner as the board prescribes to have reservations made from salary under this subsection and become entitled to benefits as provided herein. Any teacher who does not elect to come under this subsection within one year from June 1, 1949, shall be forever barred from coming under this subsection, except that any teacher on leave on June 1, 1949, may elect to come under its provisions within one year after returning to teaching service upon termination of such leave. Any teacher making such election after June 1, 1949, shall within one year after making such election pay into the retirement fund the difference between the amount of salary reservations provided under this subsection and the salary reservations actually made during the period from

September 1, 1946, to the date of such election with interest at 3% per annum in order that such election may become effective. Annuities payable to teachers coming under this subsection shall be determined as provided in s. 42.81 (13), subject to s. 42.84 (3), and payment of refunds shall be governed by s. 42.86 (2).

(4) Beginning with the first monthly payment of teachers' salaries after September 1, 1951, the board of school directors in any such city shall reserve from the salary of each teacher who enters teaching service, and, beginning with the first monthly payment after such election, from the salary of each teacher who elects to come under this subsection, and from every monthly payment thereafter, the sum of \$12 for the first 10 years of service, and thereafter the sum of \$20, but such reservations shall be limited to 10 in any school year, and shall pay the sums so reserved into the retirement fund. Any teacher from whose salary reservations or deductions have been made under s. 925-xx or sub. (1), (2) or (3) may elect in such manner as the board prescribes to have reservations made from salary under this subsection and become entitled to benefits as provided herein, except that any teacher from whose salary reservations or deductions are being made under s. 925-xx or sub. (1) or (2) shall within one year after making such election pay into the retirement fund the difference between the amount of salary reservations provided under sub. (3) and the salary reservations actually made during the period from September 1, 1946, to the date of such election with interest at 3% per annum, in order that such election may become effective. Any teacher who does not elect to come under this subsection within one year from June 30, 1951, shall be forever barred from coming under this subsection, except that any teacher on leave on the date of this subsection may elect to come under its provisions within one year after returning to teaching service upon termination of such leave. Annuities payable to teachers coming under this subsection shall be determined as provided in s. 42.81 (16), subject to s. 42.84 (5), and payment of refunds shall be governed by s. 42.86 (2).

(5) Beginning with the first monthly payment of teachers' salaries after September 1, 1953, the board of school directors in any such city shall reserve from the salary of each teacher who enters teaching service, and, beginning with the first monthly payment after such election, from the salary of each teacher who elects to come under this subsection, and from every monthly payment thereafter, the sum of \$17 for the first 10 years of service, and thereafter the sum of \$26, but such reservations shall be limited to 10 in any school year, and shall pay the

sums so reserved into the retirement fund. Any teacher from whose salary reservations or deductions have been made under s. 925-xx or sub. (1), (2), (3) or (4), may elect in such manner as the board prescribes to have reservations made from salary under this subsection and become entitled to benefits as provided herein. Any teacher who does not elect to come under this subsection within one year from June 4, 1953, shall be forever barred from coming under this subsection, except that any teacher on leave on said date may elect to come under its provisions within one year after returning to teaching service upon termination of such leave. Annuities payable to teachers coming under this subsection shall be determined as provided in s. 42.81 (17), subject to s. 42.84 (6), and payment of refunds shall be governed by s. 42.86 (2).

(5a) (a) Any member of the separate group, or any person on behalf of any such member, may make additional deposits. Such additional deposits shall be held for the benefit of the individual teacher in the retirement deposit fund for the purpose of providing an annuity or other benefit under this subchapter.

(b) Any member of the separate group may direct, upon a form furnished by the board, that any or all additional deposits subsequently made by or on behalf of said member be paid into the retirement deposit fund of the variable annuity division, but the maximum amount of such additional deposits paid into such fund shall be \$5,000 per year.

(c) When on behalf of a member of the separate group any benefit is payable under s. 42.81 or 42.86 such benefit shall be increased in the same proportion as the amount of any accumulated additional deposits bears to the amount to be transferred from the general fund to provide such benefit.

(6) (a) Beginning with the first monthly payment of teachers' salaries after August 31, 1958, the board of school directors in any such city shall reserve from the salary of each teacher who is a member of the combined group an amount equal to 4 1/2% of all compensation received for teaching service performed by such teacher.

(b) Any such member, or any person on behalf of any such member, may make additional deposits.

(c) A state deposit on behalf of each such teacher shall be made in an amount equal to the member's deposit reserved under par. (a). State deposits shall be credited as of June 30 of the fiscal year for which such member's deposits were made, except that whenever, prior to the end of the fiscal year, a member's deposit accumulation is to be paid out in a single sum as a

death benefit pursuant to s. 42.75 (2), or transferred pursuant to s. 42.74 (3), immediately before such withdrawal or transfer the account of the member shall be credited with the same state deposit which it would have received on the following June 30.

(d) All amounts reserved from the salaries of such members, or deposited by or on behalf of such members, shall be held for the benefit of the individual teacher in the retirement fund for the purpose of providing an annuity or other benefit as provided in this subchapter.

(7) (a) Beginning with the first monthly payment of teachers salaries after June 30, 1966, the board of school directors in any such city shall reserve from the salary of each teacher who is a member of the formula group an amount equal to 4-1/2% of all compensation received for teaching service performed by such teacher which is subject to contributions under subch. VI of ch. 40, plus 7% of such compensation in excess of the amount subject to such contributions.

(b) Any such member, or any person on behalf of any such member, may make additional deposits.

(c) All amounts reserved from the salaries of such members, or deposited by them, shall be held for the benefit of the individual teacher in the retirement fund for the purpose of providing an annuity or other benefit under this section.

(d) State contributions with respect to members of the formula group shall be made as provided in s. 42.89 (6).

(8) Effective as to teachers salaries paid on and after July 1, 1973, except as provided in sub. (9), the board of school directors shall reserve from the salary of each teacher who is a member of the fund an amount equal to 5% of all compensation received for teaching performed by such teacher.

(9) Notwithstanding any other provision of this subchapter, the board of school directors in any such city may pay all or any part of the salary reservations required under this section. Such payments by the board of school directors shall be available for all retirement fund purposes to the same extent as amounts which were reserved from the salary of the member. This paragraph shall not be construed as creating any contract between the board of school directors and any member of the fund or as granting any contractual right in any form to any member.

History: 1971 c. 125 s. 522 (1); 1971 c. 214; 1973 c. 20, 243.

42.81 Payment of annuities. (1) All applications or claims for annuity or for refund of contributions, and proof in support of any such

claim, shall be made to the board in such manner and form as the board prescribes or deems sufficient, and the board may make reasonable rules for making, hearing and determining claims and for carrying into effect this subchapter. The state treasurer, upon order or warrant of the board, shall pay out of the annuity account of said retirement fund, in monthly payments, to each retired teacher an annuity in such sum as the retired teacher is entitled to as determined by the board, in accordance with this subchapter.

(2) A teacher who has taught 25 years in public schools, at least 15 of which must have been served in the public schools of a city to which this subchapter applies, upon filing proper application with the board, sufficient proof of teaching service, the date of retirement therefrom, compliance with this subchapter with respect to required contributions, and a certificate of incapacity for teaching service sworn to by his attending physician and by a physician employed by the board, and upon determination by the board that such teacher presumably is incapacitated permanently for teaching service, shall be paid an annuity of \$600.

(3) For every additional year of service over 25, a teacher, entitled to an annuity under this subchapter, shall be paid an additional sum of \$40 a year; but every such additional year of service shall have been rendered in the public schools in such city of the 1st class, and in no case shall any pension or annuity exceed the sum of \$1,200 a year. Said additional sum of \$40 a year and said maximum sum of \$1,200 a year shall be applicable only to teachers who retired from service on June 23, 1931, and thereafter and in respect to whom monthly salary reservations have been made in the amounts provided in s. 42.80 (1) or (2).

(4) A teacher who has taught 5 years or more in the public schools in any such city, and who has become incapacitated for teaching service and has paid the amount of 5 years' contribution or more, upon filing with the board proper application, sufficient proofs of teaching service, temporary cessation from active teaching service for 6 months preceding application, compliance with this subchapter with respect to required contributions, and a certificate of such incapacity sworn to by his attending physician and by a physician employed by the board, and upon determination by the board that such teacher presumably is incapacitated temporarily for teaching service, may be allowed and paid, 6 months after he has ceased, temporarily, active teaching service, and for the duration of such incapacity, a proportionate annuity, the

amount of which, to be determined by the board, shall be, as nearly as practicable as many twenty-fifths of \$600 as the years of teaching service of such teacher in the public schools in said city are a part of 25, and such annuity shall cease when the incapacity ceases. If such incapacity becomes permanent and if such teacher retires from the teaching service of such city, the board, upon its determination that such teacher has retired and presumably is incapacitated permanently for teaching service, may allow and cause to be paid to such teacher a proportionate annuity, which shall be, as nearly as practicable, as many twenty-fifths of \$600 as the years of teaching service of such teacher in the public schools in said city are a part of 25.

(5) A teacher who has taught 15 or more years and less than 25 years in public schools, at least 15 of which must have been served in the public schools of a city to which this subchapter applies, and who has attained the age of 65 years, having paid the full amount of contribution for each year of such teaching service in public schools, upon filing with the board proper application, sufficient proofs of age, teaching service, the date of retirement therefrom, and compliance with this subchapter with respect to contributions, shall be allowed and paid a proportionate annuity which shall be, as nearly as practicable, as many twenty-fifths of \$600, as the years of teaching service of such teacher in public schools are a part of 25.

(6) Upon certification to the board by the superintendent of schools, if any, and the board of school directors, by its proper officers, that a teacher who has come under this subchapter presumably is mentally or physically incapacitated permanently for teaching service, and has been retired from teaching service because of such incapacity, and upon filing with the board by such school officers sufficient proof in support of such teacher's incapacity, length of teaching service, and compliance with this subchapter with respect to contributions, the board shall allow and cause to be paid to such teacher an annuity, the amount of which shall be, as nearly as practicable, as many twenty-fifths of \$600 as the years of teaching service of such teacher are a part of 25.

(7) On the application of any teacher coming under this subchapter, and having complied therewith, the board shall retire such teacher if he has been engaged in the work of teaching in public schools for a period aggregating 35 years, 20 of which have been in the public schools of such city and such teacher shall be entitled to receive and be paid the annuity provided for in subs. (2) and (3).

(8) On the application of any teacher coming under this subchapter who has complied therewith and is 65 years of age, the board shall retire such teacher if he has been engaged in the work of teaching for a period aggregating 25 years in public schools, 15 years of which have been in the public schools in said city, and such teacher shall be entitled to receive and be paid the annuity provided for in subs. (2) and (3).

(9) In determining the teaching service record and the amount of annuity payable under this subchapter to an applicant who, at the time of applying for an annuity under this subchapter, is entitled to any benefit, absolute, contingent or otherwise, under subch. I, or under the provisions of any teachers' retirement plan of any other state, territory, nation, province or governmental subdivision thereof, no credit shall be allowed or given by the board to such applicant for teaching service performed outside of a city to which this subchapter applies for which outside teaching service such applicant is entitled to any benefit, absolute, contingent or otherwise, under the provisions of any other teachers' retirement plan as hereinbefore specified. This subsection shall not affect any rights acquired under this subchapter prior to the taking effect of this subsection in any such city.

(10) Computation and payment of annuities granted under subs. (4) and (6) shall be made on the proportionate basis therein provided for teaching service of less than 25 years only. For teaching service of 25 years or more, computation and payment of annuities granted under subs. (4) and (6) shall be made as provided in subs. (2) and (3).

(11) Any teacher coming under this subchapter who has attained or attains the age of 70 years shall be retired by the board at the end of the school year in which the teacher reaches the age of 70. When so retired under this subsection, a teacher who has taught 15 or more years in public schools, at least 15 of which have been served in the public schools of a city to which this subchapter applies, and who has paid the full amount of contributions for each year of such teaching service in public schools, upon filing with the board proper application, sufficient proof of age, teaching service, the date of retirement therefrom, and compliance with this subchapter with respect to the contributions, shall be allowed and paid an annuity computed on the proportionate basis provided in sub. (5) for teaching service of less than 25 years and on the basis provided in subs. (2) and (3) for teaching service of 25 years or more.

(12) In determining the teaching service record and computing the amount of annuity payable under this subchapter the board shall

credit each applicant for annuity with time absent on leave from teaching duty while serving in the military or naval forces of the United States, or in any auxiliary branch thereof, or in the merchant marines, or in overseas service of the American Red Cross or in the overseas service of any United Service Organization, during any war, or during a period officially proclaimed to be a national emergency or limited national emergency or under P.L. 87-117; and the board shall credit each applicant for annuity, serving as aforesaid, with a sum equivalent to the total amount which would have been reserved from and after September 16, 1940, from the salary of such applicant for payment into the retirement fund if such applicant's teaching duties had not been interrupted by such service, upon proof of such service being furnished to the board.

(12a) Notwithstanding sub. (12), no credit shall be granted thereunder for any period after June 30, 1966. Credit for active service in the U.S. armed forces after June 30, 1966, shall be granted as provided in s. 40.80, and shall be determined and credited in accordance with s. 42.78 (1a).

(13) Any teacher from whose salary reservations have been made in accordance with s. 42.80 (3) shall become eligible for an annuity under the following conditions:

(a) 1. Upon certification for total and permanent disability as provided in sub. (6); or

2. Upon certification of temporary disability after 5 years or more of teaching service in the public schools of a city to which this subchapter applies, as provided in sub. (4); or

3. After 10 or more years of teaching service in a city to which this subchapter applies, having ceased to render teaching service in the public schools of a city to which this subchapter applies and having attained the age of 55 years and upon compliance with s. 42.84 (3) and if no refund of contributions has been paid to such teacher as provided in s. 42.86 (2).

(b) The annuity payable shall be determined as follows: Where the period of service is less than 25 years the annuity shall be as many twenty-fifths of \$800 as the years of teaching service are part of 25, and for the period of service of 25 years or more the annuity shall be \$800 for the first 25 years of service, increased by \$85 for each additional year of service, but shall not exceed \$1,650 in any event.

(14) Any teacher who is a member of the retirement fund may elect in writing to authorize the board of school directors to reserve from the salary of such teacher beginning with the first monthly payment of teachers' salaries after such election and from every monthly payment

thereafter the sum of \$1, but such reservations shall be limited to 10 in any school year, and to pay the sums so reserved into the retirement fund. Any teacher who does not make such election within one year after becoming a member of the retirement fund shall be forever barred from coming under this subsection. Upon the death of any teacher who has elected to come under this subsection before retirement or withdrawal from teaching service, his designated beneficiary, or in the absence of such designation, his executors or administrators shall be entitled to a death benefit of \$1,500 in addition to the refund of contributions as provided in s. 42.86, upon application therefor and upon proof of the death of said teacher and establishment of claim to the satisfaction of the board. If any teacher who has elected to come under this subsection is on leave of absence, such teacher shall pay into the fund the amounts required under this subsection in lieu of the salary reservations herein authorized within 30 days of the due date of each payment and if such payments are not made the right to a death benefit under this subsection shall terminate. Upon the retirement of any teacher who has elected to come under this subsection, such teacher may elect to continue the benefit under this subsection for a period of one year from the date of retirement upon payment to the fund at the date of such election the single sum of \$10.

(15) Any teacher who is entitled to any annuity under this subchapter may elect that in lieu of the annuity payable for the life of the annuitant as herein provided, the annuity shall be paid as follows:

(a) An annuity payable monthly to the annuitant during life, with a guarantee of at least 180 monthly payments, and in the event of the death of the annuitant before 180 monthly payments have been made, the remainder of the monthly payments shall be continued to the beneficiary designated by the annuitant, and, in the event of the death of said beneficiary before 180 monthly payments have been made, the remainder of the 180 monthly payments shall be continued to a beneficiary designated by the primary beneficiary; in the absence of such designation by the primary beneficiary, or in the event of the prior death of the person so designated by the primary beneficiary, the then present value of the remainder of the monthly payments shall be paid in a single sum to the estate of the primary beneficiary; in the event of the death of the secondary beneficiary after becoming entitled to receive monthly payments but before all such payments have been received, the then present value of the remaining payments shall be paid in a single sum to the estate of the secondary beneficiary; in the event of the death of the

annuitant before 180 monthly payments have been made with no beneficiary surviving the annuitant, the then present value of the remaining payments shall be paid in a single sum to the estate of the annuitant; or

(b) An annuity payable monthly to the annuitant during life and after the death of the annuitant monthly payments of:

1. The amount paid to the annuitant, or
2. One-half the amount paid to the annuitant, to be continued during life to the beneficiary designated by the annuitant in the original application for the annuity. Any such optional annuity shall be the actuarial equivalent of the life annuity herein provided. Any form of annuity entered upon by the annuitant cannot thereafter be changed.

(16) (a) Any teacher from whose salary reservations have been made in accordance with s. 42.80 (4) shall become eligible for an annuity under the following conditions:

1. Upon certification for total and permanent disability as provided in sub. (6); or
2. Upon certification for temporary disability after 5 years or more of teaching service in the public schools of a city to which this section applies, as provided in sub. (4); or
3. After 10 or more years of service in a city to which this section applies, having ceased to render teaching service in the public schools of a city to which this section applies and having attained the age of 55 years and upon compliance with s. 42.84 (5) and if no refund of contribution has been paid to such teacher as provided in s. 42.86 (2). The annuity payable shall be determined as follows: Where the period of service is less than 10 years, the annuity shall be as many tenths of \$450 as the years of teaching service are a part of 10, and for the periods of service of 10 years or more the annuity shall be \$450 for the first 10 years of service, increased by \$66 for each additional year of service, but shall not exceed \$2,100 in any event.

(17) Any teacher from whose salary reservations have been made in accordance with s. 42.80 (5) shall become eligible for an annuity under the following conditions:

- (a) 1. Upon certification for total and permanent disability as provided in sub. (6); or
2. Upon certification for temporary disability after 5 years or more of teaching service in the public schools of a city to which this subchapter applies, as provided in sub. (4); or
3. After 10 or more years of service in a city to which this subchapter applies, having ceased to render teaching service in the public schools of a city to which this subchapter applies and having attained the age of 55 years and upon compliance with s. 42.84 (6) and if no refund of

contributions has been paid to such teacher as provided in s. 42.86 (2).

(b) The annuity payable shall be determined as follows: Where the period of service is less than 10 years, the annuity shall be as many tenths of \$600 as the years of teaching service are a part of 10, and for the periods of service of 10 years or more the annuity shall be \$600 for the first 10 years of service, increased by \$84 for each additional year of service, but shall not exceed \$2,700 in any event.

(18) Except for subs. (1), (14) and (15), this section shall not apply to members of the combined group established under s. 42.72.

History: 1971 c. 214.

A war or national emergency has existed within the meaning of 42.81 (12), Stats 1969, relating to the Milwaukee teachers retirement fund from September 16, 1940, to the present time. 59 Atty Gen. 234.

42.82 Supplemental benefits. (1) Any person who receives an annuity for the month of September 1974, from a teachers retirement fund created under this subchapter shall, subject to a continuation of the appropriation made by s. 20.515 (1) (a), be eligible to receive the following:

(a) The monthly annuities, including amounts provided under ss. 42.82 and 42.93, 1971 stats. subject to pending adjustments under s. 42.82 (1) (a) 3, 1971 stats., which the person was eligible for and received, or would have received if such annuity had not been forfeited for that month pursuant to s. 42.73 (5) or 42.83, for September 1974; plus

(b) An amount which is equal to 4% times the number of full calendar years since the annuity began to January 1, 1974, except teachers who retired prior to May 11, 1973, shall be deemed to have been retired at least one calendar year, times the smaller of \$250 or the initial monthly annuity, excluding amounts provided under ss. 42.82 and 42.93, 1971 stats. and from additional deposits, provided that if the total initial monthly annuities exceed \$250 such percentages shall be applied only to the annuities in effect the longest. Benefits under this paragraph shall be payable to the surviving beneficiary, who receives an annuity, of eligible persons except, if the beneficiary is the survivor of a person who died while receiving an annuity from a teachers' retirement fund created under this subchapter, the amount payable under this paragraph shall be calculated based upon the beginning date of the decedent's annuity rather than the beginning date of the survivor annuity. If the form of annuity elected provided for one monthly amount initially and a different amount at some time in the future, for purposes of this paragraph, the initial monthly amount shall be determined for each month as the

amount payable in that month pursuant to the initial computation for the form of annuity elected.

(2) Any benefit payable by virtue of this section in excess of the amounts payable under other provisions of this subchapter shall be paid from and be subject to a continuation of the appropriation made by s. 20.515 (1) (a).

(3) Determinations of eligibility and the amount of any payment to be made under this section shall be made by the department, and shall be certified by the department for payment in the manner specified in s. 42.71 (1) (c) for payments from the Milwaukee teachers retirement fund.

History: 1971 c. 214, 290; 1973 c. 337; 1975 c. 39 s. 734; 1977 c. 336.

42.83 Uniformity. All annuities granted by the board under this subchapter shall be uniform in amount except as otherwise provided herein. Annuities under s. 42.81 (1) to (17) shall be computed from the first day of the month next following the date of retirement of the annuitant from teaching service in such city, except that the temporary incapacity annuity provided for in s. 42.81 shall be computed from a date 6 months after such annuitant temporarily has ceased active teaching service. No annuity, except the temporary incapacity annuity provided for in s. 42.81 and the disability annuity under s. 42.74 (1) or (2), shall be paid to any person until such person has retired from teaching service in the public schools to which this subchapter applies. No teacher is deemed to have retired from teaching service until such teacher has resigned from his position, or the board of school directors of such city has legally caused such teacher's name to be stricken from the official list of teachers; except that a teacher is deemed to have retired from teaching service if he has received a disability annuity under s. 42.74 (1) or (2) for 36 consecutive months; but the board of school directors of such city may permit the employment of a retired teacher of any age to teach as a substitute for a period of not more than 95 days in any one school year, without forfeiture of any retirement allowance.

42.84 Annuities; when payable. (1) No annuity shall be paid to any teacher from whose salary reservations have been made in accordance with s. 42.80 (1) until such teacher has contributed to the annuity and retirement fund the following sums: \$200 for the first 10 years of service, \$150 for the next 5 years of service, and \$40 for every succeeding year of service.

(2) No annuity shall be paid to any teacher from whose salary reservations have been made in accordance with s. 42.80 (2) until such

teacher has contributed to the retirement fund the following sums: \$400 for the first 10 years of service, \$300 for the next 5 years of service, and \$80 for every succeeding year of service.

(3) No annuity shall be paid on retirement to any teacher from whose salary reservations have been made in accordance with s. 42.80 (3) until such teacher has contributed to the retirement fund the sum of at least \$1,500 under s. 42.80 (3) in addition to the amounts required, if any, while under s. 925-xx, or at least \$750 under s. 42.80 (3) in addition to any amounts required while under s. 42.80 (1) or (2). Any teacher making application for retirement under s. 42.81 (13) who has not contributed the sum of \$1,500 under s. 42.80 (3) in addition to the amounts required, if any, while under s. 925-xx, shall pay into the retirement fund the difference between the amount actually contributed under s. 42.80 (3) and \$1,500, which amount may be paid, at the option of the member, by deduction from the annuity payments for the first year; and any teacher making application for retirement under s. 42.81 (13) who has not contributed the sum of at least \$750 under s. 42.80 (3) in addition to the amounts required while under s. 42.80 (1) or (2) shall pay into the retirement fund the difference between the amounts actually contributed under s. 42.80 (3) and \$750, which amount may be paid, at the option of the member, by deduction from the annuity payments for the first year.

(4) No teacher shall be required to pay into such fund under s. 42.80 (1) to (5) for more than 40 years, except that such limitation shall not apply to the requirements of subs. (1), (2), (3), (5) and (6). An annuity may be applied for by a contributing teacher and may be granted or allowed by the board prior to the retirement of the applicant from teaching service, but no annuity shall be paid until all requirements of this subchapter have been complied with by the applicant.

(5) No annuity shall be paid on retirement to any teacher from whose salary reservations have been made in accordance with s. 42.80 (4) until such teacher has contributed to the retirement fund at least \$1,000 under s. 42.80 (4) in addition to the amounts required while under s. 42.80 (1), (2) or (3). Any teacher making application for retirement under s. 42.81 (16) who has not contributed the sum of at least \$1,000 under s. 42.80 (4) in addition to the amounts required while under s. 42.80 (1), (2) or (3), shall pay into the retirement fund the difference between the amounts actually contributed under s. 42.80 (4) and \$1,000 which amount may be paid, at the option of the member, by deduction from the annuity payments for

the first year. Compliance with this subsection shall not be required to qualify for a temporary disability annuity.

(6) No annuity shall be paid on retirement to any teacher from whose salary reservations have been made in accordance with s. 42.80 (5) until such teacher has contributed to the annuity and retirement fund at least \$1,300 under s. 42.80 (5) in addition to the amounts required while under s. 42.80 (1), (2), (3) or (4). Any teacher making application for retirement under s. 42.81 (17) who has not contributed the sum of at least \$1,300 under s. 42.80 (5) in addition to the amounts required while under s. 42.80 (1), (2), (3) or (4), shall pay into the annuity and retirement fund the difference between the amounts actually contributed under s. 42.80 (5) and \$1,300 which amount may be paid, at the option of the member, by deduction from the annuity payments for the first year. Compliance with this subsection shall not be required to qualify for a temporary disability annuity.

42.85 Information to be furnished board.

The board of school directors of any such city shall notify the board, in writing, on the first day of each month, of the employment or appointment of any new teachers, and of all discharges, dismissals, suspensions and resignations from the service, and all deaths which have occurred in the teaching corps during the preceding month, and such written notification shall state the dates upon which any such events occurred. The officers and heads of departments or the board of school directors are charged with the duty of furnishing the board, without any charge or expense to the board, all information requested by the board concerning any employe under the charge of or supervision of such officers, heads of departments or the board of school directors, which information the board needs in the performance of its duties.

42.86 Refund of contributions. (1) Any contributing teacher from whose salary reservations have been made in accordance with s. 42.80 (1) who retires voluntarily or involuntarily from the service, not being in receipt of an annuity, shall be entitled to receive one-half of the total amount paid by him into the retirement fund, and in case of the death of any such contributing teacher, his heirs or legatees shall be entitled to receive one-half of the total amount paid by such teacher into the retirement fund, upon application therefor and upon proof of death of said contributing teacher, and establishment of said claim to the satisfaction of the board.

(2) Any contributing teacher from whose salary reservations have been made in accordance with s. 42.80 (2), (3), (4) or (5) and who retires voluntarily or involuntarily from the service, not being in receipt of an annuity, shall be entitled to receive the total amount paid by him into the retirement fund under said subsections, and in case of the death of any such contributing teacher, his designated beneficiary, or in the absence of such designation, his executors or administrators shall be entitled to receive the total amount paid by such teacher into the retirement fund as above provided, upon application therefor and upon proof of death of said contributing teacher, and establishment of said claim to the satisfaction of the board. In case of the death of an annuitant who has contributed to the retirement fund the amounts provided for in ss. 42.80 (2), (3), (4) or (5) and 42.84 (2), (3), (5) or (6) prior to the time when such annuitant has received as annuity, in monthly payments, an aggregate amount equal to the amount paid into the retirement fund by said annuitant under s. 42.84 (2), (3), (5) or (6), the designated beneficiary, or in the absence of such designation, the executors or administrators of said deceased annuitant shall be entitled to receive an amount equal to the difference between the amount paid into said fund as aforesaid by said annuitant and the amount paid to said annuitant, as annuity, during said annuitant's life, upon application therefor and upon proof of death of said annuitant and establishment of said claim to the satisfaction of the board.

(3) In the event of the death of a contributing teacher from whose salary reservations have been made in accordance with s. 42.80 (1), (2), (3) or (4) while employed in the public schools in a city to which this section applies and who has qualified by reason of age and service for an annuity under s. 42.81, the designated beneficiary of such teacher, or in the absence of such designation, the estate of such teacher shall be entitled to a death benefit in lieu of such refund, which shall be the actuarial equivalent of the life annuity to which such teacher would have been entitled if retirement had taken place on the date of death. Such death benefit shall be reduced by the amount of any award under ch. 102 to such beneficiary on account of the death of the member. Such death benefit may be paid in one sum or in instalments for a guaranteed period or as a life income to the beneficiary as may have been elected by such teacher in writing. In the absence of such election by the teacher such election may be made by the beneficiary after the death of the teacher. Such death benefit shall be in lieu of any payment provided in sub. (2).

(4) In the event of the death of a contributing teacher from whose salary reservations have been made in accordance with s. 42.80 (5) while employed in the public schools in a city to which this section applies and who has qualified by reason of years of service for an annuity under s. 42.81, the designated beneficiary or beneficiaries of such teacher, subject to the restrictions contained herein, shall be entitled to a death benefit which shall be the actuarial equivalent of the life annuity to which such teacher would have been entitled if retirement had taken place on the date of death, except that when the death of the teacher occurs at an age less than age 55, the amount of the death benefit shall be the actuarial equivalent of the life annuity to which the teacher would have been entitled for the period of service rendered if retirement had taken place at age 55. Such death benefit shall be paid as a life annuity to the designated beneficiary or beneficiaries. If more than one beneficiary is designated, the teacher may elect in writing the manner in which the death benefit shall be apportioned to the beneficiaries; in the absence of such election, the death benefit shall be apportioned in equal shares to the beneficiaries, and each beneficiary shall be entitled to the life annuity provided by his share. No beneficiary shall be entitled to the payment of benefits under this subsection unless such beneficiary bears one of the following relationships to the teacher: wife, husband, child, father, mother, sister or brother. The death benefit under this subsection shall be in lieu of any payment provided in sub. (2).

(5) This section shall apply in the case of any member of the combined group established under s. 42.72 who dies before September 1, 1958, but not in the case of any such member who dies after August 31, 1958.

42.87 Assignments, attachment, garnishment. (1) The benefits payable to, or other right and interest of any member, beneficiary or distributee of any estate under this subchapter shall be exempt from any tax levied by the state or any subdivision thereof, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically provided in this section. The exemption from taxation contained in this section shall not apply with respect to any tax on income.

(2) Insurance premiums, however, shall be deducted as provided in s. 42.71 (2) (f) if the annuity is sufficient.

(3) Any member, beneficiary or distributee of any estate under this subchapter may waive, absolutely and without right of reconsideration

or recovery, the right to, or the payment of all or any portion of, any benefit payable or to become payable under that law.

(4) The board may retain from the appropriate annuity or other benefit such amount as it determines to be required to reimburse the system for any money or moneys paid to any annuitant, member, beneficiary or estate as a result of an inadvertent clerical error, misrepresentation or fraud.

History: 1973 c. 20, 243

42.89 Maintenance of assets. The board shall at all times maintain assets in the retirement fund as follows:

(1) In the reserve fund at least equal to the present value of the prospective benefit payments under annuities which have been granted.

(2) In the retirement deposit fund equal to the liabilities for deposits made by members under s. 42.80 (5a) to (9) and earnings and capital gains accretions. On June 30, 1973, all remaining accumulations from state deposits shall be transferred to the state accumulation fund created under s. 42.70 (1) (c).

(3) On June 30, 1973, the then existing assets and liabilities of the general fund as created under s. 42.70 (1) (d), 1971 stats., shall be transferred to the state accumulation fund created under s. 42.70 (1) (c).

(4) As of July 1, 1966, the board shall establish the state accumulation fund for the benefit of members of the formula group by the transfer provided in sub. (3) and by the transfer from the retirement deposit fund of the accumulations from state deposits in the accounts in the fixed annuity division and in the variable annuity division of all such members.

(6) For the purpose of providing benefits of members of the formula group under this subchapter, the board of school directors shall pay each fiscal year to the retirement fund for credit to the state accumulation fund as provided by s. 42.71 (1) (e), the amount equal to the sum of the normal contribution and the accrued liability contribution for such year. The amounts of such contributions shall be determined annually by the board on the basis of such estimates of interest, mortality, salary increases and dropout rates as are applied to the system, and such other tables as the board approves, and in accordance with sub. (7) as follows:

(a) The accrued liability shall be determined as of June 30, 1966, as the then present value of all future benefits to or for the then members of the formula group to be paid or purchased from the state accumulation fund, less the present value of a percentage of the prospective future compensation of such members, and less the

amount then credited to the state accumulation fund. The percentage referred to in the preceding sentence shall be determined as the uniform percentage of the compensation of all such members which if contributed throughout the entire period of the employment of each as a teacher in membership teaching would be sufficient to provide for all benefits to be paid or purchased on their behalf from the state accumulation fund. The accrued liability contribution shall be the uniform annual amount required to liquidate the accrued liability within 40 years from July 1, 1966. The accrued liability shall be redetermined as of June 30, 1973, on the basis provided in this paragraph, and the accrued liability contribution thereafter shall be as nearly as is possible the uniform annual amount required to liquidate the redetermined accrued liability within 40 years from July 1, 1974.

(b) The normal contribution rate for any fiscal year commencing after June 30, 1965, shall be the uniform percentage of the compensation of all members of the formula group determined as of the valuation date by deducting from the then present value of all future benefits to be paid or purchased from the state accumulation fund on behalf of the then members of the formula group, the amount then credited to said fund and the present value of future accrued liability contributions, and dividing the remainder by the present value of the prospective future compensation of all such members.

(7) As of June 30 of each year the board shall cause a valuation to be made of the fund on such basis as the board establishes to determine the amounts necessary to maintain the assets of the fund as required by this section. The results of such valuation as of any June 30 shall provide the basis for the determination of the amount of the payments to be made by the state under s. 42.71 (1) (e) for the 2nd fiscal year which begins after such valuation date.

History: 1973 c. 20, 90.

42.90 Teachers in annexed territory. (1)

Whenever territory has been or is annexed to or consolidated with any city to which this subchapter applies, any teacher employed in any public school in such territory who has acquired or acquires the status of a regularly appointed teacher in the public schools of the city to or with which such territory has been or is annexed or consolidated, shall be entitled to the rights and privileges provided for in this subchapter upon complying with this subchapter. As to such teachers, for the purpose of qualifying for an annuity under this subchapter, time spent in

teaching in such territory prior to the annexation or consolidation thereof shall be considered as time spent in teaching in such city, except that s. 42.81 (9) shall apply to such teachers.

(2) No teacher mentioned in sub. (1) shall be required to comply with s. 42.40 after the effective date of such annexation or consolidation nor, as to such teachers, shall ss. 42.41 to 42.44 be applicable or effective after the effective date of such annexation or consolidation.

42.91 Withdrawals from state teachers retirement system. (1)

When a member of the state teachers retirement system ceases to be employed in a school or school system to which the state teachers retirement law applies and becomes employed in a position in a school or school system to which this subchapter applies such member may elect in writing, filed with the state teachers retirement board, to withdraw the total accumulation from such member's deposits in the state teachers retirement system, under s. 42.49 (1), and to discharge, release, waive and forfeit all interest, right or claim on the part of such member or his heirs, assigns, beneficiaries or estate under the state teachers retirement law. The amendment (1961) is retroactive to August 16, 1957, and shall apply to all withdrawals under this subchapter since that date. The member's deposits based on teaching service after September 1, 1958, which, prior to this amendment, were forfeited under this subchapter shall be paid to any member who has suffered such forfeiture.

(2) Subsection (1) shall apply in all cases of withdrawals under s. 42.49 (1) whether made prior to or after June 30, 1951, and whether or not at the time of such election the member making such election was employed in a school or school system to which this section applies, and notwithstanding the repeal of s. 38.24 (22), 1949 Stats., by chapter 511, laws of 1951.

42.92 Teachers under old section. Section

925-xx, heretofore in effect, fixing the amounts and conditions of payments of any assessments, refunds and annuities thereunder, shall remain in force and shall be referred to for the purpose of determining such amounts and conditions of payments until all such payments have been made, insofar as said provisions apply to teachers in the public schools of cities of the 1st class who are in the service at the time this section takes effect in any such city, and insofar as said provisions apply to pensioners or annuitants under said s. 925-xx. Every teacher in the schools of any such city where a pension system has been established at the time this section takes effect in any such city who desires to avail

himself of the rights and benefits conferred and to assume the limitations and assessments imposed by this subchapter, shall file a written application therefor and consent thereto within 3 years from November 1 in the year in which this section takes effect in any such city. Every such teacher who fails to file such written application and consent within the time prescribed by this section shall be forever barred from coming under this subchapter. The filing of such application and consent by any teacher who heretofore has come under s. 925-xx, shall operate as a substitution by such teacher of the provisions of this subchapter in lieu of s. 925-xx, fixing the amounts and conditions of payments of any assessments, refunds and annuities for such teacher. Any teacher in the service at the time this section takes effect in any such city who had not elected to come under s. 925-xx and who elects to come under this subchapter shall, within 5 years from the date upon which this section takes effect in any such city, pay as arrearages, into the retirement fund, in addition to the current monthly payments provided in this subchapter, a sum equal to the various payments, compounded semiannually at the rate of 4% interest, which would have been made by such teacher if he had elected to come under s. 925-xx. Payment of such arrearages by any such teacher shall be made, within said 5 years, in the manner the board determines.

42.94 Benefits extended. Any teacher employed as a continuous substitute teacher in the public schools of any such city, who has acquired or acquires the status of a regularly appointed teacher therein, shall be entitled to credit for the years of such substitute teaching service for the purpose of qualifying for an annuity pursuant to this subchapter, if the teacher pays into the retirement fund all monthly instalments for the accrued period of such substitute teaching service; and provided such teacher who taught as a continuous substitute teacher and who acquired

the status of a regularly appointed teacher before June 12, 1945, makes such instalment payments within 2 years after June 12, 1945; and provided that any continuous substitute teacher who hereafter acquires the status of a regularly appointed teacher makes such instalment payments within 2 years after the date of such appointment. Any substitute teacher who teaches a minimum of 100 days in any school year shall be deemed to be a continuous substitute teacher.

42.95 Substitute teachers; inclusion. Any person employed in the public schools of any city to which this subchapter applies, who has not acquired the status of a regularly appointed teacher and who has taught continuously in said schools, for a period of 3 school years or more of not less than 100 days each as a substitute, may elect within the time and in the manner prescribed by the board to become a member of said fund as of the beginning of the fiscal year following said election, but not before September 1, 1958, under those provisions which apply to new teachers entering teaching service of such city. Persons becoming members of said fund under this section shall not have any other status, right or privileges of regularly appointed teachers.

42.96 Other workers eligible. All full-time social center, community house, adult education or recreation directors, instructors or other employes employed by the board of school directors, who possess the qualifications required by law and the rules of the board for employment as teachers and as such directors, instructors or other employes employed as hereinabove provided in such city, shall have the status, rights and privileges of regular teachers and shall be and are regular instructors within the meaning of that term as used in s. 42.70 (2) (q).