

## CHAPTER 41

## PUBLIC EMPLOYEES RETIREMENT (EXCEPT TEACHERS)

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## SUBCHAPTER I

## WISCONSIN RETIREMENT FUND

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

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

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

control with respect to the variable annuity division.

**History:** 1971 c. 214.

**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".

**41.02 Definitions.** In this subchapter:

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

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

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

**(4) "Employer"** means the state and any city, village, town, county, common school district, high school district, unified school district, county-city hospital established under s. 66.47, sewerage commission organized under s. 144.07 (4) or a metropolitan sewerage district organized under ss. 66.20 to 66.26, or any other unit of government, or any agency or instrumentality of 2 or more units of government now existing or hereafter created within the state.

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

**(6) "Employee"** means any person who:

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

(b) Is employed by such employer in a position normally requiring actual performance of duty during not less than 600 hours a year.

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

(7) "Participating employe" means an employe other than an annuitant receiving a retirement annuity or a disability annuity who is currently in the service of a participating employer, or an employe who is on a leave of absence, subject to the limitations in s. 41.07 (1) (b).

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

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

(10) "Group C participant" means a participant whose creditable current service determined pursuant to s. 41.09 for a participating employer commences on or after January 1, 1966, or an annuitant or participant who, after December 31, 1965, again becomes a participating employe of such employer.

(10m) "Group D participant" means a participant whose creditable service under the fund terminates on or after March 31, 1972.

(11) (a) "Protective occupation participant" means any participant whose principal duties involve active law enforcement or active fire suppression or prevention, provided such duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. This definition is deemed to include any participant whose name is certified to the fund as provided in par. (d) and who is a conservation warden, conservation patrol boat captain, conservation patrol boat engineer, conservation pilot, conservation patrolman, forest fire control assistant, member of the state patrol, state motor vehicle inspector

(if hired prior to January 1, 1968), policeman, including the chief and all other officers, fireman, including the chief and all other officers, sheriff, undersheriff, deputy sheriff, county traffic policeman, state forest ranger, fire watchman employed by the Wisconsin veterans home, or who is determined by his participating employer (or by his department head in the case of a state employe) to meet the qualifications set forth in this paragraph.

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

(bb) "Protective occupation participant" also means any assistant or deputy fire marshal whose name is certified to the fund as provided in par. (d). Each employe participating under this paragraph shall be granted creditable service as a protective occupation participant determined in accordance with s. 41.09 for all service as an assistant or deputy fire marshal prior to April 26, 1972, and if he has attained the age of 50 on or before April 26, 1972, he shall be granted creditable service only if he submits his written election to be included under this paragraph to the board not later than July 1, 1972. Each employe participating under this paragraph shall be granted creditable service as a protective occupation participant determined in accordance with s. 41.09 for all service prior to April 26, 1972 which was previously considered protective occupation employment, or which was performed in a position designated in this subsection as a position in which an individual would be a protective occupation participant or as an assistant or deputy fire marshal.

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

(d) Each participating employer and each state agency shall certify to the fund on July 1, 1969, and quarterly thereafter, in the manner prescribed by the board, the names of all participating employees classified as protective occupation participants determined in accordance with this subsection. An employe may contest the certification because of its inclusion or omission of his name by filing an appeal to the board. The board may investigate the relevant facts and may, on request of either party, hold a hearing. Upon completion of its investigation and hearing, if any, the board shall make a determination which it shall certify to the participating employer or the appropriate state agency. The board's determination of an employe's status under this section shall remain in effect until receipt by the board of certifications changing it, which may in turn be subject to appeal hereunder.

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

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

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

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

called upon, to perform duties within the scope of active law enforcement, but not excepting any person regularly employed and qualifying as a deputy sheriff or county traffic policeman irrespective of the duties to which he is assigned.

(f) Each participating employe who is a protective occupation participant on July 1, 1969, or after July 1, 1969, if the participant was employed as a protective occupation participant for the 12 months immediately preceding retirement and makes application for a retirement annuity within 6 months after December 23, 1975, shall be granted creditable service as a protective occupation participant, determined in accordance with s. 41.09, for all service prior to July 1, 1969, which was previously considered protective occupation employment or which was performed in a position designated in this subsection as a position in which an individual would be a protective occupation participant.

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

(a) Who are engaged in teaching within the meaning of s. 42.20 (21) except that, notwithstanding s. 42.20 (10), effective July 4, 1977, all service as a state constitutional officer shall be included under the retirement program provided by subch. I and not under ch. 42.

(b) Who are subject to subch. IV.

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

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

(g) Who are employed as sessional employes in the legislative reference bureau, but any such employe who has served 6 months or more in such sessional position shall, if appointed to a permanent position, become a participating employe as of the date of such appointment.

(i) Who before January 1, 1974, are elected to office by vote of the people unless any such elected person requests the board in writing to be included within this fund. Any elected person included at his request shall be included during any subsequent term or part thereof which he may serve in the same office or in any other elective office while serving any participating employer. Persons so electing to participate shall be considered employes on the effective date of participation of the employer, but only if such election is received by the board within 90 days of such effective date and if such person was in the service of such employer on such effective date. In all other cases any person so electing to participate shall become an employe as of the first day of the month following the

receipt by the board of notice of such election, but creditable service shall be granted for service as an official elected by vote of the people which has not been granted previously if the person, before July 1, 1974, makes all required contributions which he would have made had he been a participating employe in a position meeting the requirements of sub. (6) during such service plus the compounded interest which would have accrued on said contributions at the effective rate if such official had been a participating employe during such service. The Wisconsin retirement fund board may accept the certification of the 600-hour requirement for prior local elective service by a state senator or representative to the assembly upon his certification of 600 hours of local elective service for a maximum of 8 years' service.

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

(n) Who are members of a retirement system of a city of the 1st class and who are employes of a vocational, technical and adult education district created under ch. 38 on the date such district is created.

(o) Who have been or will be appointed by the university of Wisconsin system under s. 36.19 as student assistants or employes-in-training.

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

(14) Any participating employe who originally obtained membership in the Wisconsin retirement fund under provisions of the statutes relating to supreme court justices, court of appeals judges, circuit judges, members of the state legislature or state constitutional officers who later accepts employment in a state position subject to this subchapter without the occurrence of a break in service, or who accepted employment with the Wisconsin state agencies building corporation and reimburses the fund for the employe share for the period of employment, will continue to have his or her retirement annuity computed in accordance with s. 41.11 (6) (c) 3. b, or s. 41.11 (6) (d) 3. b if eligible

thereunder, if the employe pays into the retirement fund a sum equal to the difference between the contributions required under s. 41.07 (2) (a) 3 or (am) 2 and the actual contributions the employe made under s. 41.07 (2) and if the employe makes all future contributions to the fund under s. 41.07 (2) (a) 3 or (am) 2.

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

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

(17) "Current service" means the period beginning on the day for which the employe first receives credit as a participating employe and ending on the day of the latest separation from the service of all participating employers, excluding all intervening periods during which such employe shall not receive, nor have a right to receive, earnings from a participating employer. For service on or after January 1, 1966, creditable current service shall be determined pursuant to s. 41.09.

(18) "Earnings" means the total amount of money earned by an employe of a participating employer for personal services rendered to or for such employer and the money value, as determined by the employer of any board, lodging, fuel, laundry and other allowances provided for such employe in lieu of money, but excluding uniforms purchased directly by the employer, and employer contributions for insurance and retirement. For any participating employer earnings paid to a participant directly by any other unit of government shall be excluded for that employer. Any payment by a participating employer to an employe of compensation for accumulated vacation, sick leave, compensatory leave or any form of severance payment because of separation from employment is not earnings, as defined in this subsection, for purposes of this subchapter.

(19) "Rate of earnings" means the actual rate upon which the earnings of any employe are

calculated at any time, as certified by the governing body of the employer in a written notice received by the board, assuming that, unless otherwise specified, the following are equivalents: 2,000 hours, 250 days, 50 weeks, 12 months, one year.

**(21)** "Formula final rate of earnings" means:

(a) Except as provided in par. (b) or (c), the monthly rate of earnings obtained by dividing 1) the participant's total earnings received from a participating employer during the 5 calendar years (excluding any year more than 5 years prior to the effective date) in which such earnings were the highest during the calendar years preceding the January 1 following the date of his latest separation from the service of that employer by 2) the number of months of service creditable to him for such 5 years; if a participant has earnings for less than 5 such calendar years his formula final rate of earnings is the rate obtained by dividing his total earnings for all such years by the total number of months of his creditable service therefor; or

(b) If so elected by a participant, "formula final rate of earnings" means, but only with respect to any annuity computed for a participant for service as a supreme court justice, circuit judge, county judge, member of the legislature or state constitutional officer elected by vote of the people, one-twelfth of the annual statutory salary which would have been payable to such participant during the last completed month in which such participant was a participating employe in such a position if he had not been prohibited by law from receiving an increase in such salary during his term of office; or

(c) Except as provided in par. (b), "formula final rate of earnings" for a Group D participant means the monthly rate of earnings obtained by dividing 1) the participant's total earnings received from all participating employers during the 3 calendar years (excluding any year more than 3 years prior to the effective date for any participating employer) in which such earnings were the highest during the calendar years preceding the January 1 following the date of his latest separation from the service of all such employers by 2) the number of months of service creditable to him for such 3 years; if a participant has earnings for less than 3 such calendar years his formula final rate of earnings is the rate obtained by dividing his total earnings for all such years by the total number of months of his creditable service therefor. The divisor in 2) shall not include more than one month for each calendar month in the divisor period. The board may adjust any computation hereunder as necessary to prevent any inequity which might

otherwise exist if a participant has a combination of full-time and part-time service.

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

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

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

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

**(23)** "Normal retirement date" means the day on which a participant attains the age of 60 years if he or she is or was a protective occupation participant; 62 years if he or she is or was a supreme court justice, court of appeals judge, circuit judge, member of the legislature, state constitutional officer elected by vote of the people, or a Group D participant who is or was a county or municipal officer elected by vote of the people; or 65 years otherwise; but after June 30, 1974, normal retirement date for each protective occupation participant means the day on which the participant attains the age of 55 years, and after June 30, 1969, for purposes of s. 41.11 (6), normal retirement date for each protective occupation participant means the day on which such participant attains the age of 55 years. The normal retirement date of any participant shall be determined by the employment category of the participant and the applicable statutory provisions at the earlier of either the date it is necessary to make any determination or to take any action relative to the participant for purposes of the fund, or the date of termination of employment of the participant, notwithstanding the fact that a participant may have been in one or more different employment categories at any

previous time. For purposes of computing the formula annuity under s. 41.11 (6) of a participant who has creditable service in 2 or more of the categories specified in s. 41.07 (2) (a) or (am), the normal retirement date for each such category shall be used to determine the amount of annuity to be paid with respect to creditable service in each such category.

(24) "Annuitant" means a person receiving a retirement annuity, beneficiary annuity or a disability annuity from this fund, including a person whose annuity has been suspended.

(26) "Annuity" means a series of monthly payments payable at the end of each calendar month during the life of the annuitant or during a specific period. Each such annuity shall accrue from its beginning date as specified in this subchapter. The first instalment of each annuity shall be due on the last day of the calendar month in which the annuity was approved and shall be the amount of annuity accrued through such due date. The last payment shall be made as of the end of the calendar month prior to the month in which the annuitant dies, except as otherwise specifically provided in this subchapter.

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

(29) (a) "Governing body" means the common council in cities, the village board in villages, the town board in towns, the county board in counties, the school board in school districts except as to schools in a city school district, or the board, commission or other governing body having the final authority for any other unit of government or for any agency or instrumentality of 2 or more units of government, or any agent duly appointed by any such body and designated in a written notice filed with the board as being authorized to act for any such body in matters pertaining to the fund. For the state there shall be a governing body for each constitutional office, department and independent agency, the court administrator and the legislature which governing body shall be the head of such state unit. The head of any such state unit may, in a written designation filed with the board, name an employe of the unit to act for him in all matters pertaining to the fund.

(b) Notwithstanding par. (a), the director may authorize the governing body of a participating employer which is a city operating a city school district to delegate to the school board the responsibility for acting with respect to employes under the control of the school board in all matters pertaining to the fund, but any such

delegation of responsibility shall not be construed to relieve the governing body of such participating employer from any liability otherwise imposed on the participating employer by this subchapter.

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

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

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

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

(34) "Accrued liability" means the present value at any time of the future contributions payable by a participating employer as determined pursuant to s. 41.10 (2) (a) or s. 41.105 (1) (c).

**History:** 1971 c. 211; 1971 c. 214 ss. 20 to 34, 148; 1971 c. 256, 258; 1971 c. 270 s. 99; 1971 c. 307 s. 25, 26; 1973 c. 12 s. 37; 1973 c. 20, 151, 288; 1973 c. 333 s. 201m; 1975 c. 137, 189, 224, 319; 1977 c. 182, 187, 273, 449.

Employes hired by the manager of the Madison transit system pursuant to a management contract between the city and the manager are employes of the city for purposes of retirement, group insurance and social security 59 Atty. Gen. 192.

The federal age discrimination in employment act of 1967, as amended, does not invalidate (23) or 41.11 (1), mandatory retirement at reaching retirement age. 63 Atty. Gen. 530.

Prior service credit for elected officials participating in the Wisconsin retirement fund under (12) (i) may be paid by the governmental employer. 64 Atty. Gen. 61.

#### 41.03 Wisconsin retirement fund board.

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

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

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

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

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

History: 1973 c. 20

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

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

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

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

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

(f) Submit an annual statement to the governing body of each participating employer, and to any participating employe upon request, as soon after the end of each calendar year as possible. Such statement shall include a balance sheet, showing the financial and actuarial condition of the fund as of the end of the calendar year, a statement of receipts and disbursements during such year, a statement showing changes in the assets, liability, reserve and surplus accounts during such year, information as to investments and such additional statistics as are deemed necessary for a proper interpretation of the condition of the fund.

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

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

(j) Employ or select such administrative, clerical and other employes as are required for the administration of the fund. Actuarial or other contractual services shall be retained under s. 40.02. The actuary or actuarial firm retained under s. 40.02 shall be the technical advisor of the board and in addition to general advice shall:

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

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

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

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

5. Certify, when so requested, the amount of any annuity or benefit granted by the board.

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

(2) The board may:

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

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

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

or typographical mistake and produces adequate supporting information.

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

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

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

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

*History:* 1971 c. 125; 1971 c. 214 ss. 35, 36, 148; 1973 c. 137; 1977 c. 418.

#### **41.05 Employers Included and effective**

**dates.** (1) Any employer, except a city which on March 31, 1972 was a city of the 1st class, a county having a population of 500,000 or more and the state, shall be included within and subject to the provisions of this fund by so electing, in accordance with this section. If the official notice of election to be included has been received by the board on or before November 15 the effective date of participation of such employer shall be the ensuing January 1; otherwise the effective date shall be the January 1 after the ensuing January 1. The state is hereby included, effective January 1, 1948. A city or village which has not elected to participate but some of whose employes will be included within and subject to this fund on or after January 1, 1948 shall be included within and subject to this fund effective January 1, 1948, as though such employer had elected to participate in this fund, but until such employer does actually so elect and such election becomes effective, its employes included within and subject to this fund shall be only those specified by ss. 61.65 (6) and (7), 62.13 (9) (e), (9a), (10) (f) and (g), 1975 stats.

(2) Whenever any school district is created, the territory of which includes more than one-half of the last assessed valuation of either a school district which was a participating employer at the time of such creation or a city which at the time of such creation was a participating employer and which operated a city school district, the school district so created

shall automatically be a participating employer from its inception, but no prior service credits shall be provided for any personnel thereof. Any district created from the territory of a former joint city school district may, however, elect to be liable for its proportionate share, as determined by the board, of the unfunded liability of the city as determined under s. 41.105 (1) (c) on the date the independent school district is or was created.

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

(5) Election by an employer to be included within the provisions of this fund shall be made by a resolution adopted by a majority of all the members of the governing body, which governing body shall submit a certified notice of such election to the board. Such notice must:

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

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

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

(r) Any elected state officer who was elected prior to August 30, 1957, but who was not eligible to be included under the fund before said date, and who, after such date and having served in such elective office continuously therefrom, files with the fund an election under s. 41.02 (12) (i) and within 60 days thereafter makes all normal contributions from January 1, 1957, to the first day of the month following the date of filing such election, shall be credited with prior service credits as of January 1, 1957, for eligible state service prior thereto at the rate of 2 times the employer credit for current service and with employer credits from January 1, 1957, to the first day of the month following the date of filing of such election. Any such election made after March 31, 1972 shall result in the crediting, as of the date of payment in compliance with this paragraph, of creditable service for the period of

time indicated in each case rather than in the crediting of prior service credits or employer credits.

(t) Each participant who was a participating employe of the state on January 1, 1966, shall be given creditable service, as of such date, for all service as a member of the legislature and all service as a state constitutional officer elected by vote of the people, which has not previously been credited under any other provision of law. The amendment of this paragraph by chapter 581, laws of 1965 shall not affect any rights created or action taken pursuant to this paragraph prior to July 8, 1966.

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

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

(9) (a) Notwithstanding this section every county having a population of less than 500,000 which has not hitherto elected to become a participating employer shall on January 1, 1962, be a participating employer.

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

History: 1971 c. 214 ss 37, 38, 148; 1975 c. 189; 1977 c. 29, 182, 273, 305, 449

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

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

2. All such persons who become employes of any participating employer after the effective date of participation of such employer as provided in s. 41.05, beginning upon the first day on which any such person has met all of the other qualifications for becoming a participating employe.

4. All members of the state employes' retirement system who shall be on a leave of absence from the state service on January 1, 1948 or who

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

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

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

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

(e) Employes of the Wisconsin housing finance authority, the Wisconsin health facilities authority, and the Wisconsin solid waste recycling authority are state employes for purposes of subchs. II and VI of ch. 40, subch. I of ch. 41 and s. 230.35 (2) and (2m).

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

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

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

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

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

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

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

7. Additional contributions of such amount as are received for any participating employee.

(am) Effective for earnings paid on or after January 1, 1974:

1. For each employe not otherwise specified, 5% of such earnings.

2. For each supreme court justice, court of appeals judge, circuit judge, or state, county or municipal officer elected by vote of the people, 5-1/2% of the earnings.

3. For each protective occupation participant covered by the federal OASDHI system, 6% of such earnings.

4. For each other protective occupation participant, 8% of such earnings.

5. Additional contributions of such amount as are received for any employe.

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

(c) For participating employes other than state employes, in lieu of the contributions required by par. (a) or (am), all or part of such contributions may be paid by the employer; but all such payments shall be reported to the board as though contributed by participating employes, and all such payments shall be available for all retirement fund benefit purposes to the

same extent as normal contributions which were deducted from the earnings of such participating employes. Action to assume employe contributions as provided herein shall be taken at such time and in such form as is determined by the governing body of the participating employer.

(d) Effective for earnings received after June 30, 1967, by each participating employe of the state, an amount equal to 2% of each payment of earnings shall be paid by the state, in lieu of an equal amount of the contributions required to be made by par. (a) or (am). The amount to be paid by the state under this paragraph shall be increased on July 1, 1969, to 2-1/2%, on January 1, 1970, to 3%, and on July 1, 1970, to 4% of each payment of earnings. Such payments by the state shall be credited to the account of each participating employe and shall be available for all retirement fund benefit purposes to the same extent as normal contributions which were deducted from the earnings of such participating employes. For purposes of computing retirement fund contributions and benefits and maintaining accounts, all earnings of state employes earned but not paid, prior to July 1, 1967, shall be deemed to have been paid prior to July 1, 1967.

**History:** 1971 c. 42, 125; 1971 c. 214 ss. 39 to 46, 148; 1971 c. 307; 1973 c. 208; 1973 c. 243 s. 82; 1973 c. 336 s. 79; 1975 c. 126, 224; 1977 c. 187 ss. 39, 135; 1977 c. 196 s. 131; 1977 c. 305, 449

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

1. For prior service, each participating employe who is an employe of a participating employer on the effective date provided such date is prior to January 1, 1966, shall be credited, as of such date, with a prior service credit of an amount equal to 2 times the accumulated value, as of such date, of the contributions which would have been made during the entire period of prior service of such employe, assuming the earnings of such employe to have been uniform during such period of prior service and equal to the monthly earnings obtained by dividing the total earnings during the period of the 3 calendar years immediately preceding the effective date, by the number of months in such period for which any earnings were received by such employe; the rate of contribution to have been 3% except that for policemen, including the chief and all other officers, county undersheriffs, deputy sheriffs and traffic policemen, the rate shall be 5%, and for firemen, including the chief and other officers, the rate shall be 7%

unless on the effective date such employment is included under the federal old age, survivors, and disability insurance system in which event the rate shall be 5%; the contributions for each calendar year to have been made at the end of such year; and the contributions to have accumulated with interest at the rate of 3% per annum compounded annually.

2. For current service, each participating employe shall be credited with the following amounts as of the dates specified:

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

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

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

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

4. When any person who was a member of the state employes' retirement system on December 31, 1947, becomes a participating employe under the Wisconsin retirement fund, the board shall certify such fact to the investment board which shall forthwith certify to the Wisconsin retirement fund board the total sum to the credit of such person in said former system, including an equitable amount of interest from July 1, 1947, which shall be determined by the investment board and by it credited to the respective accounts, indicating the amount attributable to regular contributions and interest, and the amount attributable to additional contributions and interest which Wisconsin retirement fund board shall thereupon credit the amount attributable to regular contributions and interest and the amount attributable to additional contributions and interest, as an additional credit to an

account which shall be established forthwith for such participating employe in the Wisconsin retirement fund. The portion of such additional credit which is attributable to regular contributions and interest under the state employes' retirement system shall be treated as normal credits except that no corresponding employer credit therefor shall be given pursuant to subd. 2. Whenever the investment board makes such a certification, it shall forthwith transfer, by cash payment or sale or assignment of securities from the state employes' retirement fund to the Wisconsin retirement fund, assets equal in value to the total of the amounts so certified. The investment board may make a correctional or supplementary certification and corresponding transfer of assets at any time.

7. Notwithstanding any other provision of this section, any participating employer other than the state may grant creditable prior service to any participating employe who has been employed by such participating employer for not less than 15 years, whether before or after the effective date for such participating employer, but who was not an employe of such participating employer on the effective date, if such participating employe returned to the employment of such participating employer within 4 years following such effective date. When a participating employer desires to grant any such creditable prior service, the governing body of the participating employer shall so certify to the fund and shall furnish all information necessary to make a determination of the amount of such creditable prior service. The present value of the creditable prior service thus granted shall be paid by the participating employer which grants such service within 30 days after the date of notification by the board of the amount due.

8. The prior service credits of every participating employe of each employer on January 1, 1960, shall be redetermined where necessary to include in his total earnings during the 3 calendar years immediately preceding the effective date under subd. 1 all earnings in excess of \$4,200 per year as an employe of that participating employer, as of the effective date of participation of that participating employer. Any increase in the prior service credits of the employe of an employer under this subdivision shall be added to its obligation under s. 41.19 (1) (a).

9. The prior service credits of every participating employe of each employer on January 1, 1960, shall be redetermined as of such date where necessary to include credit for each year of his service for that participating employer subsequent to its effective date of participation, and prior to January 1, 1958, in an amount equal to the product of the normal contribution rate for such participating employe for such year

multiplied by the amount of the earnings paid to him in such year, but not considered as participating earnings due to a limitation then in effect under s. 41.02 (18) on the monthly or annual amount of earnings, without interest. Any increase in the prior service credits of the employes of an employer under this subdivision shall be added to its obligation under s. 41.19 (1) (b) to be paid under s. 41.10 (2) (b).

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

15. Any state participating employe who has not received prior service credit, who had at least 15 continuous years of eligible state service prior to January 1, 1950, and who has been a participating employe continuously for 5 years or more between January 1, 1950, and January 1, 1961, shall receive prior service credit as of January 1, 1950, for all eligible state service prior thereto. Such prior service credits shall be granted only if any such employe within 60 days of January 14, 1966 contributes to the fund as a normal contribution any amounts previously withdrawn from the former state employes' retirement system, together with interest compounded annually at the effective rate of interest from January 1, 1950, to the date of such contribution, and the amount of prior service credited as provided herein shall be reduced by the total amount of such contributions and interest. No interest income shall be credited to any prior service credits granted under this subdivision for any period prior to 1966.

16. Any state participating employe who has not received prior service credit, who had at least 5 continuous years of eligible state service prior to January 1, 1948, including any period of military service by such a participating employe who left the service of the state to enter the armed forces and who returned to state service not more than 90 days after his release from military service, and who has been a participating employe continuously for 5 years or more immediately prior to March 31, 1972, shall be granted creditable service for such eligible state service and military service prior to 1950 as of said effective date. Such creditable service shall be granted only if any such participating employe within 60 days of March 31, 1972 contributes to the fund as a normal contribution any amounts previously withdrawn from the former state employes' retirement system, together with interest on such amount compounded annually

at the effective rate of interest from January 1, 1948, to the date of such contribution.

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

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

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

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

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

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

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

(e) As of December 31, 1965, the accounts in the fixed annuity division and the variable annuity division of each participant whose accounts include accumulated additional credits attributable to regular contributions and interest under the former state employes retirement fund shall

be adjusted by such transfers within such accounts as are required to include in his accumulated normal credits the amount of such accumulated additional credits not in excess of the amount of his accumulated prior service credits and to include the remainder of any of such accumulated additional credits in his additional credits within the meaning of s. 41.07 (2) (a) 7; and to decrease his accumulated prior service credits and increase his accumulated employer credits by the amount so included in his accumulated normal credits. Transfers of credits within the accounts of any participant as provided herein shall not affect the total amount of his accumulated credits in the fixed annuity division or in the variable annuity division, the total amount of his accumulated credits attributable to his own contributions, or the total amount of his accumulated prior service and employer credits.

**(2) PRIOR SERVICE CREDITS FOR SERVICEMEN.** (a) Prior service credits pursuant to sub. (1) (a) 1 shall be granted for periods of service in the armed forces of the United States during World War II, which shall include such service subsequent to September 16, 1940, to any person who was an employe on the effective date of participation by such employer and who left the service of such employer to enter such armed forces. Such credit shall be granted as of the date the employe resumes or resumed employment with the employer pursuant to s. 45.50 or 230.32 prior to January 1, 1948. Credit shall also be granted for service during World War I to any person who was employed by the employer at the time of entrance into the armed forces of the United States, if such employment was resumed within 90 days after discharge from the armed forces and continued until the effective date of participation of the employer with total interruptions thereafter of not to exceed 2 years.

(b) In each such case the earnings computed under sub. (1) (a) 1 shall be adjusted to reflect any salary increase or salary adjustment which would have altered the rate of earnings during the period of the 3 calendar years immediately preceding the effective date if such employment had not been interrupted by service in the armed forces. Whenever because of service in the armed forces an employe shall have no earnings as computed under sub. (1) (a) 1, then the rate of earnings shall be computed by dividing the earnings during the last 12 calendar months of employment by 12, and such rate of earnings shall be adjusted as provided in this paragraph.

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

**(3) CURRENT SERVICE CREDITS FOR SERVICEMEN.** (a) Current service credit shall be granted for that period of service spent in the armed forces of the United States, between the effective date of participation by the employer and the date when the employe resumed employment with the employer pursuant to s. 45.50 or 230.32, such credit to be given as of such latter date, but such credit shall be granted only to a person who was an employe on the effective date of participation by such employer, who left the service of such employer to enter such armed forces and who entered such armed forces prior to January 1, 1948.

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

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

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

**History:** 1971 c. 214 ss. 47 to 52, 148; 1971 c. 270 s. 104; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 273.

**41.09 Creditable service.** (1) The creditable service of each participant at any time prior to January 1, 1966, shall be the sum of his periods of prior service and current service as a participating employe as determined pursuant to the applicable statutes and rules. The period of creditable service of a participant after 1965 shall be the number of years and completed months of service for which he receives earnings until his employment is terminated, including any period covered by a payment which could be considered earnings if the participant was alive during such period. The board shall fix and determine by proper rules how much service in

any year is equivalent to one year of creditable service.

(2) A participant shall be considered as a separate participant with respect to service within each of the classes of participating employees described in s. 41.07 (2).

(3) Creditable service for active service in the U.S. armed forces after December 31, 1965, shall be granted as provided in s. 40.80, determined and credited as follows:

(a) Creditable prior service shall be granted only to a participant who is otherwise eligible and who was an employe on the effective date of participation of his employer. Such creditable prior service shall be credited as of the date of return to employment in accordance with s. 40.80 (1) (c).

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

(c) Notwithstanding any other provision of this subchapter any participant who has creditable service for not less than 20 years, exclusive of any period of active service in the U.S. armed forces and any period of civilian war department service previously credited, shall be granted creditable service, but not to exceed 4 years, for the actual period of active service in the U.S. armed forces as defined in s. 40.80 (2) which meets the standards under s. 40.80 (1) (e). Such creditable service shall be allocated in proportion to the amount of creditable service for each of the types of creditable service set forth in s. 41.11 (6) (d) 3. a, b, c and d. For purposes of this paragraph, each year of the prescribed term of office of any state official elected by vote of the people is equivalent to one year of creditable service. This paragraph shall not apply with respect to any active service which occurs after December 31, 1973.

(4) Notwithstanding any other provision of this section, any participating employer may provide by resolution for the inclusion in the creditable prior service of its participating employees of periods of employment by another employer from whose area or any part thereof the area governed by the participating employer was created, or by another employer all or part of whose area is included within the area governed by such participating employer. The present value of the creditable service thus granted shall be paid by the participating employer which grants such service within 30 days after the date of notification by the board of the amount due.

(5) The computation of the creditable prior service of a person who was an employe on the effective date shall include all previous service for such municipality, including service as an

elective or appointive official or as an employe, if such service or employment conformed to the requirements of s. 41.02 (6).

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

(7) Each employe of the state who is a participating employe on July 1, 1972, shall be granted as of such date creditable service for all service as a member of the legislature which has not been credited under any other provision of law if, prior to such date, the member makes all required contributions which he would have made as a participating employe during such service after January 1, 1957, and prior to the first day of the month in which he became a participating employe.

(8) Each employe of the state who is a participating employe on October 17, 1971 shall be granted as of such date creditable service for all service in Wisconsin as a national guard technician which has not been credited under any other provision of this subchapter.

(9) The creditable service of every supreme court justice and circuit judge shall include all periods of service as a supreme court justice, circuit judge or county judge, or as full-time judge of a court of record or municipal court, or as a member of the legislature, or as a state constitutional officer elected by vote of the people, but excluding any such period of service for which credit has been granted under any other public retirement system in this state except as provided in s. 41.05 (6) (n), 1975 Wis. stats. The creditable service of each circuit judge who has received any supplemental salary under s. 252.071 or 253.07 (2), 1975 Wis. stats., shall also include, for the county which paid the salary, a period equal to the total period of service as a circuit judge or county judge in the county.

(11) Each employe of the legislature, other than a member of the legislature, who is a

participating employe on February 18, 1972 shall be granted, as of such date, creditable service for all service as an employe of the legislature after December 31, 1960, which met the requirements of s. 41.02 (6), and which has not been credited under any provision of law, if, prior to March 1, 1972, the employe makes all required contributions which he would have made had he been a participating employe during such service after December 31, 1960, assuming for purposes of this subsection that his earnings during such service would have been subject to required contributions, together with interest on such contributions compounded at the effective rate to the date of payment.

(12) Any former employe of the Wisconsin state agencies building corporation who reimburses the fund as provided in s. 41.02 (14) shall receive creditable service for the period of employment covered by such reimbursement.

(13) (a) Notwithstanding any other provision of this section, any employer electing to be included within the provisions of this fund in accordance with s. 41.05 (1) and (5) may in the resolution and in the certified notice of election recognize 100%, 75%, 50%, 25% or none of the prior creditable service of its employes earned by the employes while employed by the employer, provided the same percentage of each employe's prior creditable service is recognized.

(b) Any employer which recognizes less than all of the prior creditable service of its employes under par. (a) may adopt another resolution as provided in s. 41.05 (1) and (5) increasing, for each person who is still a participating employe on the effective date of the increase determined under s. 41.05 (1), the percentage of the employe's prior creditable service which is recognized to one of the higher levels provided by par. (a) provided the accumulated percentage does not exceed 100%.

(c) Whenever the percentage of recognized prior creditable service is increased as provided in par. (b), the employer contributions computed under s. 41.105 (1) (c), shall be increased to reflect the value of the increased prior creditable service being granted, amortized over the remainder of the 40-year funding period provided for prior creditable service costs of that employer.

**History:** 1971 c. 91, 176; 1971 c. 214 ss. 53 to 57, 148; 1971 c. 228, 258, 336; 1973 c. 294; 1975 c. 170; 1977 c. 29, 305, 330, 449.

**41.10 Contributions by employers. (1)** Each participating employer shall make contributions to the fund as follows:

(a) Employer contributions of the percentages, as specified in this section, of each payment of earnings made to each participating

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

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

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

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

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

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

- a. All future contributions pursuant to subd. 1;
- b. All future contributions by the employer with respect to such participants pursuant to par. (b); and
- c. The then balance of the employer's accumulation account.

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

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

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

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

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

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

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

(4) The amount of each employer contribution shall be determined by applying the proper percentage rate of contribution to the total of all earnings paid to employes of the employer on each pay day, and all such amounts shall be due and be deposited in the office of the board by the

employer within the time limits established by rule.

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

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

**History:** 1971 c. 214 ss. 61, 148; 1977 c. 187 s. 135; 1977 c. 305, 418, 449.

#### **41.105 Adjusted employer contributions.**

(1) Effective for earnings paid after December 31, 1973, each participating employer shall make contributions to the fund as follows:

(a) For current service, the percentage of each payment of earnings made to each participating employe determined as provided in sub. (2).

(b) For disability, the percentage of each payment of earnings made to each participating employe determined as provided in sub. (2), as required to provide the excess, if any, of the

present value of the disability benefits expected to be granted during such year over the present value of the annuities which would be payable under s. 41.11 in the absence of the minimum age and amount requirements thereof, adjusted for any surplus or deficiency pursuant to s. 41.20 (1) (b).

(c) The uniform annual amount required, after allowance for anticipated employe separations, at the prescribed rate of interest, to amortize over the period of 40 years following December 31, 1973, or the effective date if later, the amount by which the then present value of all future benefits of the then participants of the employer, other than benefits financed by employe contributions and benefits financed pursuant to par. (b), exceeds the then present values of:

1. All future contributions by the employer with respect to such participants pursuant to par. (a); and

2. The then balance of the employer's accumulation account.

(d) Advance contributions of such amounts as are determined by any participating employer for the purpose of reducing any existing liability under par. (c).

(2) The contributions required under sub. (1) (a) and (b) shall be expressed as a percentage of the earnings of each participating employe, and shall be determined as though all employes of all participating employers are employes of a single employer. Such determinations shall also be made in such a manner as to require the use of one percentage rate with respect to the earnings of all protective occupation participants and a separate percentage rate with respect to the earnings of all other participants. Such rates shall be determined on the basis of the information available at the time such determinations are made, and on such assumptions as the actuary recommends from time to time and the board approves. The percentage under sub. (1) (a) for 1974 and subsequent years shall be computed by the frozen initial liability valuation method.

(3) The amounts and percentage rates determined hereunder shall become effective, after certification by the board, as of the beginning of the calendar year to which they are applicable and shall remain in effect during such year, except that the director upon the written certification of the actuary may change any amount determined under sub. (1) (c) during any calendar year for the purpose of reflecting in such amount any reduced obligation which results from any payment of advance contributions.

(4) The amount of each employer contribution shall be the sum of one-twelfth of the annual

amount determined under sub. (1) (c), plus the amount determined by applying the proper percentage rate as determined in accordance with sub. (2) to the total of all earnings paid to employes on each pay day, and all such amounts shall be due and be deposited in the office of the board by the employer within the time limits established by rule. Such contributions shall be made by the state from the respective funds from which the salaries are paid to the employe for whom such contributions are being made. The heads of the respective state departments and agencies which make the salary deductions in accordance with s. 41.07 (2) (b) shall, at the time that the salary deductions are sent to the board, determine the amount of the corresponding employer contribution and shall indicate the amount of such contribution on the monthly report submitted in duplicate to the fund. The fund shall transmit one copy of such monthly report to the department of administration together with a voucher for payment to the retirement fund from the appropriate state funds of the amounts payable thereto as indicated by the reports so submitted. Thereupon the department of administration shall promptly approve the voucher for payment and the state treasurer shall forthwith issue a check therefor to the retirement fund.

(5) The provisions of s. 41.10 (5) and (6) shall continue in effect after December 31, 1973, but may be adjusted by the board as necessary to carry out the purpose of this section.

History: 1971 c. 214 ss. 62, 148; 1977 c. 418; 1977 c. 449 s. 496.

#### 41.11 Compulsory retirement; annuities.

(1) COMPULSORY RETIREMENT. Any participating employe, except an officer elected by the vote of the people, who has reached his normal retirement date on the effective date for his employer shall be retired at the end of his first calendar quarter year as a participating employe and any participating employe, except an officer elected by the vote of the people, who reaches his normal retirement date shall be retired at the end of the calendar quarter year in which such date occurs, unless, in either case, his employment is continued by his employer or appointing authority.

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

(6) RETIREMENT ANNUITIES. (a) The following described persons shall be entitled to retirement annuities, beginning on the dates hereinafter specified, determined as provided in this subsection and in accordance with the prescribed rate of interest and the actuarial tables in effect on the date of initial approval as provided in s. 41.04 (1) (b):

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

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

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

4. For purposes of determining the beginning date of a retirement annuity, a participant is deemed to have separated from the service of an employer at the end of the day on which the participant last performed services for the employer.

(b) Subject to pars. (c) and (d), the initial amount of any retirement annuity in the normal form shall be the sum of the following:

1. The annuity which can be provided from the accumulated additional and normal credits of the participant, and

2. The annuity which can be provided from the accumulated prior service credits and from employer credits in an amount equal to the accumulated normal credits of the participant.

(c) Notwithstanding par. (b), the initial amount of retirement annuity in the normal form of a Group B or Group C participant shall not be less than the sum of the following:

1. The annuity which can be provided from the accumulated additional credits of the participant;

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

3. An annuity computed on the basis of the earnings and creditable service of the participant, if the annuity begins on or after the normal retirement date of the participant (or, if the annuity begins prior to the normal retirement date of the participant the annuity computed as provided in this subdivision 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 his normal retirement date), determined by multiplying the number of years of his creditable service by the following amount:

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

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

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

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

amount shall be 2-1/10 of one per cent of his formula final rate of earnings, less three-tenths of one per cent of his final excess OASDHI earnings, if any.

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

(d) Notwithstanding pars. (b) and (c), the initial amount of retirement annuity in the normal form of a Group D participant shall not be less than the sum of the following:

1. The annuity which can be provided from the accumulated additional credits of the participant;

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

3. An annuity computed on the basis of the earnings and creditable service of the participant, if the annuity begins on or after the normal retirement date of a participant (or, if the annuity begins prior to the normal retirement date of the participant the annuity computed as provided in this subdivision 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 his normal retirement date), determined by multiplying the number of years of his creditable service by the following amount:

a. For each participant for creditable service of a type not otherwise specified in this subdivision, 1.3% of his formula final rate of earnings;

b. For each participant for creditable service as a supreme court justice, court of appeals judge, circuit judge, or state, county or municipal officer elected by vote of the people, 1.8% of his or her formula final rate of earnings;

c. For each participant subject to subch. VI of ch. 40 for creditable service as a protective occupation participant, 1.8% of his formula final rate of earnings;

d. For each participant not subject to subch. VI of ch. 40 for creditable service as a protective occupation participant, 2.3% of his formula final rate of earnings.

4. The initial amount of any annuity determined under subd. 3 in the normal form shall not exceed the amount which, when added to the primary or disability insurance benefit for which he is eligible or for which he will be eligible upon attaining the lowest age at which old-age benefits are payable under the OASDHI program, equals 80% of the participant's formula final rate of earnings. If a participant does not receive such OASDHI amount by reason of his failure to apply therefor or by virtue of the suspension thereof, he will notwithstanding such fact be deemed to receive such amount. If a participant fails to establish the amount of, or his eligibility for, such OASDHI benefit, determination thereof shall be made by the board on such basis as the board, by rule, establishes. If any participant is eligible for an annuity based on service for more than one participating employer, his formula final rate of earnings for purposes of this subdivision shall be the sum of his formula final rate of earnings for all participating employers.

(f) The normal form of retirement annuity is an annuity payable monthly for the life of the annuitant with a guarantee of 60 monthly payments.

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

(7) OPTIONAL RETIREMENT ANNUITIES. Any participant who is eligible to receive a retirement annuity in the normal form as provided in sub. (6) may elect to receive the actuarial equivalent thereof in one of the following optional annuity forms, or in any optional form provided by rule adopted by the board, but any such optional form shall be based on actuarial equivalent values with due regard to selection against the fund:

(a) As a straight-life annuity terminating at the death of the annuitant.

(b) As a retirement annuity payable monthly for the life of the annuitant with a guarantee of 180 monthly payments.

(c) As an annuity payable monthly for the life of the annuitant, and after the death of the annuitant, monthly payments of 75% of the

amount of the annuity paid to the annuitant to be continued to such one beneficiary during life as the participant shall have designated in his original application for an annuity.

(d) As a reduced annuity payable monthly for the life of the annuitant, plus a temporary annuity payable monthly but terminating with the payment for the month in which the annuitant attains age 62. It is the intent of this option that so far as is practicable the aforesaid life annuity and temporary annuity shall be determined in such relative amounts that the annuitant's total anticipated benefits from the fund and from his primary OASDHI benefit will be the same each month both before and after attainment of age 62, assuming that the annuitant has no further wages credited to his account under the federal OASDHI system after ceasing to be a participating employe. An annuity granted under this paragraph shall include a guarantee of 60 monthly payments, but each monthly payment due after the death of the annuitant shall be in the same amount as the annuity which would have been paid in such month to the annuitant if living.

**(8) RETIREMENT ANNUITY PAID IN SINGLE SUM.** If the retirement annuity in the normal form which could be provided under sub. (6) from all available credits 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.

**(10) LUMP SUM PAYMENT IN LIEU OF ANNUITY.** Notwithstanding any other provision of this subchapter, any participant who is eligible to receive an annuity in the normal form of less than \$25 per month under sub. (6) may elect, in lieu of such annuity, to receive the then present value of such retirement annuity in a single sum.

**(11) PAYMENTS TO BENEFICIARY UPON DEATH OF ANNUITANT.** (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.

(b) In lieu of the continuation of monthly payments under par. (a), the then present value of such payments shall be paid as a death benefit under s. 41.14 if:

1. The estate of the annuitant is his beneficiary;

2. No beneficiary of the annuitant survives;

3. The death of the beneficiary occurs after he has become entitled to receive payments hereunder, 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.

(c) Any beneficiary entitled to receive monthly payments of less than \$25 as of March 31, 1972, may elect at any time to receive the then present value of the remainder of his annuity.

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

(b) Upon subsequent retirement, the annuity of a former annuitant shall be computed in the same manner and the annuitant shall be required to accept the same optional form of annuity as that under which he initially retired, and if such annuity is an optional annuity provided under sub. (7) (c) the same beneficiary must be designated, but this sentence shall not apply if the creditable service of the participant for employment after his reentry into service exceeds his creditable service for previous employment. The amount determined under sub. (6) (c) 3 or (d) 3 upon any subsequent retirement shall be reduced by the amount of annuity that can be provided, on the earlier of the subsequent retirement date or the normal retirement date of the participant, by the sum of the aggregate annuity payments as determined under sub. (6) (c) 3 or (d) 3 made to the participant prior to his normal retirement date.

(c) If any participant receiving a retirement annuity which was approved after March 31, 1972 receives from any participating employer

earnings for personal services, including services performed on a contractual basis, his annuity shall be terminated as of the end of the month prior to the date on which the total of such earnings received in any calendar year exceeds 6 times his formula final rate of earnings. For purposes of this subsection, earnings are considered received as of the date on which such earnings would normally be paid.

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

**History:** 1971 c. 125; 1971 c. 214 ss. 63 to 74m, 147, 148; 1975 c. 319, 421; 1977 c. 187, 449.

Payment for unused sick leave, vacation and compensatory time extends the date of termination of employment and the last day for which earnings were paid for Wisconsin retirement fund purposes by the period of time represented by the payment 60 Atty. Gen. 352.

See note to 41.02, citing 63 Atty. Gen. 530.

**41.12 Variable annuities. (1)** (a) Any participating employe may by written notice to the board elect to provide for a variable annuity through a segregation of credits in his account to be accumulated from future contributions. Such notice of segregation is effective as of the beginning of the calendar quarter year following its receipt by the board, except that a notice received by the board during the first calendar quarter year of employment shall be effective as of the beginning date of such employment.

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

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

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

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

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

**(4)** (a) Any participating employe who has acted pursuant to sub. (1) may by written notice to the board elect that one-half of the credits accumulated in accounts in his name as of December 31 prior to the effective date of the election under sub. (1) be segregated for a variable annuity. The aggregate amount so segregated shall be made in 5 equal annual instalments except that if such annual instalments would be less than \$1,000 the annual instalment shall be the lesser of \$1,000 or the amount required to complete the transfers. No election may be made under this subsection after December 31, 1972.

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

(c) In effecting such segregation the accumulation of additional credits as of the beginning of the calendar year shall first be segregated until exhausted. Then equal amounts of the accumulation of normal credits and employer credits shall be segregated until such accumulations as of the beginning of the calendar year have been exhausted. Finally, accumulated prior service credits shall be segregated to the extent required, provided that after December 31, 1965, all such segregations of employer and prior service credits shall be made within the employer accumulation account.

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

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

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

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

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

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

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

**(7)** The rate of net gain or loss for any period shall be determined by dividing the amount received from the distribution under s. 40.06 (3) (b) by the average of the amounts of the assets of the variable annuity division at the beginning of each month in the period. Any net gain or loss

of the variable annuity division not credited or debited to participants' accounts pursuant to sub. (6) (a) or (b), to employer segregated reserves pursuant to sub. (6a), or to the reserve for variable annuities granted account pursuant to sub. (9) at the end of any period shall be considered in the determination of the rate of net gain or loss for the ensuing period.

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

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

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

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

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

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

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

**(10)** (a) Periodically the amount payable with respect to all variable annuities previously granted shall be redetermined so as to reflect the net gain or loss of the reserve for variable annuities granted as determined by rule in accordance with actuarial procedures approved by the board of trustees on a basis which it deems

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

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

(11) In addition to the changes made pursuant to sub. (10) variable annuities granted under ss. 41.11 (7) and 41.13 shall be changed in conformity with the subsection under which granted.

History: 1971 c. 214 ss. 75, 75m, 76, 147, 148; 1973 c. 137.

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

1. Any protective occupation participant who is a participating employee who has not attained age 55, any Group D participant who is a participating employee in a position specified in s. 41.11 (6) (d) 3.b who has not attained age 62, and any other participating employee who has not attained age 65 and is totally disabled, either mentally or physically, by a disability which is likely to be permanent. A person shall not be deemed to be disqualified solely because he is able to perform the duties of any position for which the compensation does not exceed \$2,000 in any calendar year. "Totally disabled" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of permanent duration. The participating employer shall certify to the board that the participating employee is unable to continue in employment because of a total disability of such a nature as to reasonably prevent performance of the duties of any position and as a consequence is not entitled to any earnings from such employer. For the purposes of this subsection a participant shall, within the limitations of s. 41.07 (1) (b), be considered to be a participating employee on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if no other employment has intervened since service for the participating employer and if the termination of active service for the participating employer was due to such disability. For the purposes of this subsection a participant who is an official elected by the voters shall be considered as a

participating employee for 30 days after the cessation of his earnings as an elected official.

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

2a. A participant who becomes an employee of the state of Wisconsin pursuant to chapter 90, laws of 1973, section 546, as affected by chapter 333, laws of 1973, section 189b, may consider service as a member of the employees' retirement system of the county of Milwaukee as service for a predecessor employer for purposes of subd. 2.

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

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

(c) The amount of any disability annuity shall be the greater of the following, determined as provided in this paragraph and in accordance with the prescribed rate of interest and the actuarial tables in effect on the date of initial approval as provided in s. 41.04 (1) (b) or on the date of approval by the board if initial approval is not granted pursuant to s. 41.04 (1) (b):

1. The amount of the annuity to which a participating employee would be entitled under s. 41.11 (6), or to which he would be entitled except for the age requirement of s. 41.11 (6) (a).

2. The amount of the annuity that can be provided from the accumulation of additional credits, plus the lesser of the following amounts: 50% of the participant's formula final rate of earnings, or 1.3% of such formula final rate of

earnings, but 1.8% of such formula final rate of earnings of a participant whose normal retirement age is 62 or of a protective occupation participant who is subject to subch. VI of ch. 40, but 2.3% of such formula final rate of earnings of a protective occupation participant who is not subject to subch. VI of ch. 40, multiplied by the number of years of creditable service, including in the latter assumed service between the date the disability occurred and the date on which the applicant will attain the age applicable to him under par. (a) 1. The number of such years shall be determined to the nearest full year.

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

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

(e) If the report of any such physician indicates that the annuitant has recovered from disability and is able to perform the duties of any regular position for which the annual compensation exceeds \$2,000, or if the annuitant refuses to submit to such examination, the disability annuity shall terminate as of the end of the month previous to the date of determination by the board of such recovery or refusal.

(f) If any annuitant receiving a disability annuity receives earnings from any source whatsoever for personal services, including services performed on a contractual basis, his disability annuity shall be suspended as of the end of the month prior to the date on which the total of such earnings received in any calendar year exceeds \$2,000. Any disability annuity so suspended shall be reinstated on January 1 following the date of suspension, or, if earlier, on the first day of the month following the date of termination of such personal services. An annuity which is reinstated in any calendar year on a date other than January 1 thereof shall be suspended again for any subsequent month thereof in which the disability annuitant receives any amount of such earnings for personal services. For purposes of this paragraph earnings are considered received as of the date on which such earnings would normally be paid.

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

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

1. Have attained age 55, but have not attained age 60, but after June 30, 1969, have attained age 50, but have not attained age 55; and have been a participating employe for not less than 15 years; and

2. Have established by medical evidence that he has become physically or mentally disabled, after the attainment of the applicable minimum age specified in subd. 1; to such an extent that he can no longer efficiently and safely perform the duties required by his position, and that such condition is likely to be permanent.

(c) *Benefit.* Any participant who qualifies under this subsection shall receive a special disability benefit determined as provided in sub. (2) (c).

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

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

(f) *Review; final determination.* Either the employe or the employer may request a review of the preliminary report by the board. Such a request for review shall be filed in writing within 20 days following receipt of the report by the employe or employer. The board shall thereupon be authorized to proceed pursuant to s. 20.901 to use the services of staff members of the department of industry, labor and human relations, including an examiner and reporter to provide for a hearing to be conducted by such examiner on behalf of the board. Such hearing shall be conducted pursuant to ss. 227.07 to 227.13, and the examiner shall submit to the board a written report of his findings together with the summary of the evidence. The employer shall be considered a party to the proceeding. Thereupon the board shall make a final determination. Such determination shall be subject to review under ch. 227.

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

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

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

(5) **DISAPPROVAL; REAPPLICATION.** If an application for any disability annuity is disapproved, the filing date of such application may be used as the filing date of a subsequent application for a retirement annuity or for a separation benefit, but only if the use of such date would prevent the direct loss of benefits or undue delay into the payment of a benefit based on the subsequent application.

**History:** 1971 c. 214 ss. 77 to 84, 148; 1973 c. 333; 1975 c. 414 s. 28.

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

(a) The beneficiary determined under s. 40.50 of any participant or of any annuitant on the date of death of the participant or annuitant.

(b) Any death benefit may be paid as a beneficiary annuity, subject to s. 41.15 (1), or as a single cash sum, as specified by the participant or annuitant in the last written notice received by the board prior to his death or, in the absence of such written notice, as specified by the beneficiary in the application for the death benefit.

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

(d) For purposes of this section:

1. A participant is deemed a participating employe on the date of his death if he is then an applicant for a retirement annuity whose application was received by the board within 30 days after he ceased to be a participating employe, and who would have been entitled to such annuity had he lived.

2. A participant is deemed a participating employe on leave of absence, subject to the limitations of s. 41.07 (1) (b), if the participating employer for which he last performed services as a participating employe has not filed notice of the termination of his employment, notwithstanding the fact that no formal leave of absence is in effect.

3. If the death of a participating employe on leave of absence, other than a leave for purposes of military service, arises from employment by any employer other than a participating employer, his employment shall be deemed to have terminated and he shall not be considered a participating employe on the date of his death.

4. Every participant is deemed to become an annuitant immediately upon the approval of his application for a retirement or disability annuity if he is living at the time of such approval.

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

(a) Upon the death of a participant, the amount equal to the accumulated normal and additional credits of such participant on the date of his death, plus the sum of the accumulated prior service credits and employer credits in his account at December 31, 1965, compounded to the first day of the month in which such death occurs at the effective rates of interest as determined from year to year, or in the case of amounts segregated in the variable annuity division, at the rates of net gain or loss credited or debited to individual accounts in the variable annuity division. No benefit shall be payable under this paragraph unless the participant at the date of his death was:

1. A participating employe;
2. A participant who was receiving a benefit under s. 66.191, but who was not an annuitant;
3. A participant, other than an annuitant, who has some creditable service in each of not less than 15 calendar years; or
4. A participant who was currently contributing to a teachers retirement fund or system

under ch. 42, or who would have been contributing to such a fund or system except for the attainment of age 70.

(b) Upon the death of a participant, other than an annuitant or a participant whose beneficiary is entitled to receive a death benefit under par. (a), (f) or (g) the amount equal to the sum of the accumulated normal and additional credits of the participant on the date of his death.

(c) Upon the death of a disability annuitant, the excess of the sum of the accumulated additional and normal credits of such annuitant which were used at the time the annuity began to provide the disability annuity, over the sum of all annuity payments to which the annuitant had become entitled prior to death; but if the beneficiary to whom a death benefit is payable is a spouse or minor child (including stepchild or legally adopted child), or a trust in which such beneficiary has a beneficial interest, the death benefit shall be as follows, if greater:

1. If such death occurs prior to the normal retirement date of the annuitant, the single cash sum which, at the date of death of the annuitant, is actuarially equivalent to a beneficiary annuity (terminating in the case of a minor child at the end of the month in which such child attains age 21) of the monthly amount to which such beneficiary would have become entitled if the death of the participant had occurred on the day prior to the date on which the disability annuity commenced, and if the death of any beneficiary who failed to survive the annuitant had occurred prior to said date; or

2. If such death occurs on or after the normal retirement date of the annuitant and prior to the 5th anniversary of such date, the single cash sum which, at the date of death of the annuitant, is actuarially equivalent to an annuity of the same monthly amount as would be payable to the annuitant but terminating as of the end of the month in which occurs the 5th anniversary of the normal retirement date of the annuitant, but if the beneficiary is a minor child such date of termination shall not be later than the end of the month in which such child attains age 21.

(f) Upon the death of a participating employe after credits have been reestablished in his account pursuant to s. 41.08 (1) (a) 3, the amount determined in accordance with par. (a), (b) or (g), but the amount so determined shall be reduced by the sum of all disability or retirement annuity payments received by such employe; but the amount so determined shall not be less than the accumulations from the normal and additional contributions made by the participant after the date of the most recent termination of his annuity.

(g) Upon the death, after December 31, 1965, of a participating employe who has attained the age of 60 years, or upon the death after June 30, 1969, of a protective occupation participant who has attained age 55, if 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 participating employe as determined by the board, or a trust in which such beneficiary has a beneficial interest, the present value at the day following the date of such death of the life annuity to the beneficiary which would have been payable, in the absence of the \$10 minimum annuity provision of s. 41.11 (6) (a) 2, if the participating employe had been eligible to receive a retirement annuity beginning on the date of his death and had elected to receive such annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount payable during his lifetime, but if there is more than one such beneficiary the amount of such annuity and its present value will be determined as if the oldest of such beneficiaries were the sole beneficiary. Payment hereunder shall be completely in lieu of any payment to such beneficiary under par. (a), but if the death benefit payable to such beneficiary under this paragraph would be less than the amount determined under par. (a) the death benefit shall be payable under par. (a) and this paragraph shall not be applicable to such beneficiary.

**History:** 1971 c. 214; 1973 c. 20; 1975 c. 94, 189

Recovery by a fireman's widow under 66.191 and 41.14 is not precluded. *Appleton v. ILHR Dept. 67 W (2d) 162, 226 NW (2d) 497.*

Discussion of validity of marriage performed before divorce decree was final in relation to death benefit under (2). 60 Atty. Gen. 59

**41.15 Beneficiary annuities. (1)** (a) A death benefit may be paid as a beneficiary annuity, if:

1. The amount of the death benefit is sufficient to provide a beneficiary annuity in the normal form of at least \$25 monthly; and

2. The beneficiary or the participant has elected to have the death benefit paid as a beneficiary annuity.

(b) The normal form of beneficiary annuity is an annuity payable monthly for the life of the beneficiary, with a guarantee of 60 monthly payments. All of those provisions of s. 41.11 (11) relating to an annuitant shall also apply to a beneficiary annuitant.

(2) Whenever any death benefit is payable in the form of an annuity, such annuity shall begin on the day following the date of death of

the participant or annuitant provided the board has received:

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

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

(3) The amount of any beneficiary annuity shall be that which can be provided from the death benefit, determined in accordance with the prescribed rate of interest and the actuarial tables in effect on the date of approval of such annuity as provided in s. 41.04 (1) (b).

(4) Any beneficiary who is eligible to receive a beneficiary annuity in the normal form as provided in sub. (1) may elect to receive the actuarial equivalent thereof in one of the following optional annuity forms:

(a) As a straight-life annuity.

(b) As an annuity payable monthly for the life of the annuitant with a guarantee of 180 monthly payments.

(c) If the beneficiary is the surviving spouse of a participant, as a reduced annuity payable monthly for the life of the annuitant, plus a temporary annuity payable monthly but terminating with the payment for the month in which the annuitant attains age 62. It is the intent of this option that so far as is practicable the aforesaid life annuity and temporary annuity shall be determined in such relative amounts that the annuitant's total anticipated benefits from the fund and from the federal OASDHI system will be the same throughout the annuitant's lifetime. An annuity granted under this paragraph shall include a guarantee of 60 monthly payments, but each monthly payment due after the death of the annuitant shall be in the same amount as the annuity which would have been paid in such month to the annuitant if living.

(d) Any beneficiary, or the legal or natural guardian of a minor beneficiary may, in lieu of a life annuity, elect that such beneficiary receive the death benefit in the form of a temporary annuity of such amount as is approved, beginning on the day following the date of death of the participant or annuitant and ending with the monthly payment immediately prior to the beneficiary's 21st birthday, and a final payment, payable one month after the termination of the temporary annuity, of such amount as can be provided from the death benefit, after providing for the temporary annuity, on the basis of the prescribed rate of interest and the actuarial tables in effect on the date of initial approval of such annuity as provided in s. 41.04 (1) (b), but a beneficiary, prior to the final payment, may, if the amount of such final payment is sufficient to provide an immediate beneficiary annuity in the normal form of at least \$25 monthly, elect to

receive in lieu of such final payment an annuity commencing on the day following the date of termination of the temporary annuity, determined on the basis of the prescribed rate of interest and the actuarial tables in effect on the date of initial approval of such annuity as provided in s. 41.04 (1) (b).

History: 1971 c. 214; 1975 c. 94 s. 91 (5); 1975 c. 189, 199.

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

(1) Any participant who is not employed as a participating employe and who at the time of application therefor would not be entitled to either a retirement or disability annuity beginning immediately. Subsequent employment as a participating employe prior to the initial approval of the separation benefit shall cancel the application.

(2) Each separation benefit shall be paid in the form of a single cash sum as soon as practicable after receipt by the board of both a written application by the participant and a written notice from the last employer certifying that such participant has ceased to be a participating employe. The amount of any separation benefit shall be the sum of the accumulated additional credits and normal credits of the participant, including any amount paid by an employer in accordance with s. 41.07 (2) (c) or (d), and including all interest and net gains or losses credited to the first day of the year in which the separation benefit application is filed.

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

**41.17 Investment of assets.** The assets of the fund, in excess of the amount of cash required for the current operations as determined by the board, shall be invested and reinvested as provided by ss. 25.17 and 40.06.

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

**41.18 Funds. (1)** All money received by the board shall be deposited with the state treasurer for the account of the fund. All disbursements shall be made pursuant to authorization by the board except that investments shall be made as provided in s. 40.06.

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

(4) The fund may refund any money paid in error into the fund. To effect such a refund the name of each person or employer entitled to a refund and the amount thereof shall be certified to the department of administration. Thereupon

and notwithstanding s. 20.913, the department of administration shall draw its warrant for the amount and in favor of the person or employer so certified, and the state treasurer shall pay the same and charge it to the appropriation made by s. 20.515 (1) (w).

History: 1971 c. 214 s. 148; 1973 c. 137.

#### 41.19 Employer accumulation accounts.

(1) For the purposes of establishing reserves for the future payment of benefits to participants, a separate accumulation account in the name of each participating employer, except as provided in sub. (5), shall be created as of January 1, 1966, and maintained as hereinafter described. Each accumulation account shall be:

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

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

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

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

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

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

(g) Credited as of each December 31 with interest at the effective rate on the mean balance for the year then ending of the accumulation

account not segregated for variable annuities pursuant to s. 41.12 (6a). The mean balance for any year of an accumulation account shall be determined as one-half of the sum of the balance at the beginning of such year plus the balance at the end of such year, but prior to crediting interest pursuant to this paragraph.

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

(3) Separate accounts shall be maintained for each participant and, except as provided in sub. (5), for each participating employer. Transactions affecting the employees of any employer shall not affect the accounts of any other employer except as otherwise specifically provided in this subchapter.

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

(5) Effective January 1, 1974, there is created a joint employer accumulation account consisting of the aggregate debits and credits previously determined in accordance with this section. After such date all credits and debits as provided in this section shall be made within the joint employer accumulation account without regard to the identity of the employer, and all references in sub. (1) to s. 41.10 shall be deemed to include reference to the appropriate or corresponding provision of s. 41.105.

History: 1971 c. 214 ss. 99, 100, 148; 1975 c. 189.

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

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

(b) The disability benefit surplus shall be determined as of the end of each year as the amount by which 1) accumulated contributions pursuant to s. 41.10 (2) (c) or 41.105 (1) (b), of all employers for all prior years and the current year, exceeds 2) the amounts required to provide, when added to the present values of the annuities to which the employees would be entitled under s. 41.11 (6), the present value of all benefits to participating employees granted disability annuities pursuant to s. 41.13 as of the date of commencement of such disability annuities. Amounts required to provide disability annuities terminated pursuant to s. 41.13 (4) shall be excluded from the determination of the disability surplus. Whenever the disability benefit surplus or deficiency exceeds 100% of the average annual requirements under 2) during the 3 preceding calendar years, the contribution rates for disability benefits shall be revised in such manner as the board deems necessary to reduce such surplus or deficiency.

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

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

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

(d) On July 31, 1975 the appropriate reserve under par. (a) shall be increased by an amount equal to the value of each monthly annuity payable under s. 41.50 on July 31, 1975. Such amount shall be transferred to the appropriate reserve as provided under this paragraph from

the surplus interest account of the fixed annuity division of the fund.

**History:** 1971 c. 214 ss. 101, 148, 149; 1973 c. 137; 1975 c. 39.

Surpluses in the annuity reserve fund may be distributed to annuitants as dividends without conflicting with Art. IV, sec. 26, Wis. Const. 58 Atty Gen 43.

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

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

(b) Authorized and directed to pay to the board concurrently with each remittance of employee contributions deducted from earnings, the corresponding employer contribution out of the general fund or any special fund from which the earnings were paid.

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

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

**History:** 1971 c. 214 s. 148; 1975 c. 189; 1977 c. 449

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

(b) The board may retain out of any annuity or benefit such amount as the board in its discretion may determine, for the purpose of reimbursing the fund for any money paid to any annuitant, beneficiary or participant through misrepresentation, fraud or error. Upon the

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

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

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

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

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

(8) If the fund is unable to contact any annuitant or beneficiary for a period in excess of 7 years, the board may determine that for purposes of this subchapter the annuitant or beneficiary is deceased, as of a date determined by the board, and the applicable provisions of s. 41.11 or 41.14 shall be invoked for the purpose of paying any annuity continuance or death benefit provided therein.

History: 1971 c. 125; 1971 c. 214 ss. 102, 103, 148; 1975 c. 39 s. 734; 1975 c. 94 s. 91 (3); 1975 c. 189.

**41.23 Supplemental benefits.** (1) Any person who receives an annuity for the month of September 1974, from the Wisconsin retirement fund created under this chapter 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 which the person was eligible for and received, for the month of 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, times the smaller of \$250 or the initial monthly annuity, excluding amounts provided from additional deposits. 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 former employe who died while an annuitant, 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 chapter 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. 41.04 for payments from the Wisconsin retirement fund.

(4) No payment shall be made under this section, nor shall any right accrue under this section, for or after any month for which the member receives compensation which is subject to s. 41.07 (2) (am).

(6) Any person who receives a benefit from the Wisconsin retirement fund in accordance with s. 41.60 (4), for the month in which receipt of such a benefit becomes effective, shall be eligible to receive the supplemental benefits determined in accordance with this section, but no such supplemental benefit shall be payable for any month before receipt of such a benefit is effective.

History: 1973 c. 337; 1975 c. 39 s. 734; 1977 c. 182, 336.

## SUBCHAPTER II

### CONSERVATION WARDENS PENSION FUND

**41.43 Termination and disposition of fund.** (1) At the close of business on December 31, 1973, the conservation wardens pension fund shall cease to exist, whereupon the assets and liabilities of such fund shall be transferred to the Wisconsin retirement fund. Such transfer shall

be reflected on the accounts of the Wisconsin retirement fund as follows:

(a) An amount equal to the accumulated contributions of each conservation warden who becomes a participating employe pursuant to s. 41.47 shall be credited to the individual account of each such conservation warden as employe normal contributions.

(b) An amount equal to the reserve for future benefits for members of the conservation wardens pension fund who retired prior to January 1, 1974, and for their survivors, shall be transferred to the Wisconsin retirement fund for credit to the appropriate reserve under s. 41.20 (2) (a).

(c) An amount equal to the excess of the amounts determined under pars. (a) and (b) over the aggregate amount of the assets of the conservation wardens pension fund shall be transferred as a debit to the accumulation account of the state of Wisconsin as created under s. 41.19 (1).

(2) The amount of each transfer or other action under sub. (1) shall be as determined by the actuary and approved by the Wisconsin retirement fund board.

History: 1973 c. 151.

#### 41.44 Employe and employer contributions.

(1) Effective for participating earnings paid on or after January 1, 1974, each person who becomes a participating employe under the Wisconsin retirement fund pursuant to s. 41.47 (1) shall make contributions as provided in s. 41.07 (2) (am), but subject to s. 41.07 (2) (d).

(2) Effective for participating earnings paid on or after January 1, 1974, the department of natural resources shall pay to the Wisconsin retirement fund monthly the following amounts:

(a) For each person who becomes a participating employe under the Wisconsin retirement fund pursuant to s. 41.47 (1), the percentage of earnings determined under s. 41.105 (2) which is applicable to the employment category of each such participating employe; and

(b) In each of the 480 months next following December, 1973, such amount as is determined by the actuary and approved by the Wisconsin retirement fund board. Such amount shall be determined so that the present value of such required payments as of December 31, 1973, is equal to the amount by which the present value of benefits expected to become payable to all former members and beneficiaries of the former conservation wardens pension fund exceeds the amount of the assets transferred to the Wisconsin retirement fund pursuant to s. 41.43, plus the present value of future contributions with respect to such former members as required under par. (a). The present value of any or all of such

monthly payments may be made in advance at such time or times as may be determined by the department of natural resources.

(3) The computations required under s. 41.105 (1) (c) which are made after December 31, 1973 shall be adjusted by the actuary as necessary to recognize those liabilities for which payment is made pursuant to sub. (2) (b).

History: 1973 c. 151.

**41.45 Board abolished.** Effective December 31, 1973, the conservation wardens pension board is abolished and all powers and duties of said board shall thereafter be exercised by the Wisconsin retirement fund board.

History: 1973 c. 151.

#### 41.46 Benefits of retired members and survivors continued.

Each benefit which is being paid in accordance with this subchapter on December 31, 1973, shall be continued in full force and effect, but after such date shall be paid by the Wisconsin retirement fund to each person entitled thereto, or to a survivor's benefit based thereon, under ss. 41.30 to 41.42, 1971 stats.

History: 1973 c. 151.

#### 41.47 Rights of active members.

(1) Effective January 1, 1974, each active member of the conservation wardens pension fund shall become a participating employe subject to all provisions of the Wisconsin retirement fund, whereupon all rights and privileges as a member of the conservation wardens pension fund shall cease. Each such member shall receive creditable service as a protective occupation participant under the Wisconsin retirement fund equal to his service as a member of the conservation wardens pension fund, and shall be credited with employe normal contributions as provided in s. 41.43 (1) (a).

(2) Upon the termination of employment, death, disability or retirement of any person who became a participating employe under the Wisconsin retirement fund pursuant to sub. (1), the benefit to be paid to such member or his beneficiary shall be determined and paid in accordance with subch. I. Any benefit so determined and paid is in lieu of any benefit or other right which existed under this subchapter before January 1, 1974.

(3) Any conservation warden subject to this section may file written notice with the Wisconsin retirement fund board no later than December 31, 1973, electing that his benefit rights under ss. 41.30 to 41.42, 1971 stats., be continued. Any benefit payable to any such conservation warden or his survivors shall be paid by the Wisconsin retirement fund but shall be determined and paid entirely in accordance with ss.

41.30 to 41.42, 1971 stats. Any such conservation warden who files such written notice of election shall not be required to retire until he has reached 62 years of age, but he shall make contributions as provided in s. 41.44 (1).

History: 1973 c. 151.

### SUBCHAPTER III

#### OLD STATE RETIREMENT SYSTEM

**41.50 State employes' retirement system abolished; rights preserved.** After July 31, 1975 each monthly annuity payable under ss. 42.65 to 42.71, 1957 stats., and 41.50, 1973 stats., shall be paid from the Wisconsin retirement fund. All rights of each person entitled to such a monthly annuity shall be preserved in full.

History: 1975 c. 39.

### SUBCHAPTER IV

#### RETIREMENT PROGRAM FOR MUNICIPAL POLICE OFFICERS AND FIRE FIGHTERS

**41.60 Transitional provisions. (1) TERMINATION OF MUNICIPAL PENSION FUNDS FOR POLICE OFFICERS AND FIRE FIGHTERS; TRANSFER OF LIABILITIES.** At the close of business on March 31, 1978, each pension fund created under s. 61.65 or 62.13 (9), (9a) or (10), 1975 stats., shall cease to exist, whereupon the liabilities of each such fund shall be transferred to the Wisconsin retirement fund. Each such transfer shall be determined by the actuary and approved by the Wisconsin retirement fund board, and shall be reflected on the accounts of the Wisconsin retirement fund as follows:

(a) An amount equal to 4% of the salary of each employe throughout his or her membership in a pension fund affected by this section shall be credited as employe normal contributions to the individual account of each such employe who is employed as a member of such a pension fund on March 31, 1978; an amount equal to each such credit shall be added to the accrued liability of the employer under subch. I.

(b) An amount equal to the reserve for future benefits for members of each pension fund affected by this section who retired on or before March 31, 1978, and for their survivors, shall be transferred from the accumulation account under s. 41.19 (5) for credit to the appropriate reserve under s. 41.20 (2) (a); an amount equal to each such credit shall be added to the accrued liability of the employer under subch. I.

(c) An amount equal to the present value of benefits expected to become payable to or on

behalf of each person who is employed on March 31, 1978 as a member of a pension fund affected by this section, adjusted by the present value of future contributions with respect to such employes as required by sub. (2) (a) and by amounts credited under par. (a), shall be added to the accrued liability of the employer under subch. I.

**(2) EMPLOYE AND EMPLOYER CONTRIBUTIONS.** (a) Effective for earnings as defined by s. 61.65 or 62.13 (9), (9a), or (10), 1975 stats., paid after March 31, 1978:

1. Each employe affected by this section shall make contributions to the Wisconsin retirement fund in an amount equal to 4% of salary.

2. The employer of each employe affected by this section shall make contributions to the Wisconsin retirement fund in an amount equal to the percentage of earnings for protective occupation participants determined under s. 41.105 (2).

(b) The employer of each employe affected by this section shall also pay to the Wisconsin retirement fund the amount necessary, in accordance with s. 41.105, to amortize the increase in the accrued liability of each employer as determined under sub. (1).

(c) In lieu of the amortization payment required under (b), the employer has the option of paying the increase in accrued liability provided by sub. (1) on a pay-as-you-go basis, as determined by the actuary. The board shall determine the timing and procedure for exercising that option.

(d) Any employer affected by this section may also make advance contributions at any time under s. 41.105 (1) (d).

**(3) BOARD AUTHORITY.** After March 31, 1978, the Wisconsin retirement fund board shall assume, and thereafter be responsible for, all authority previously exercised by village or city officials relative to pension funds and benefits provided under ss. 61.65 and 62.13 (9), (9a), and (10), 1975 stats., except that rule-making authority and operational planning functions shall be assumed by the employe trust funds board.

**(4) BENEFITS OF RETIRED MEMBERS AND SURVIVORS CONTINUED.** Each benefit being paid under s. 61.65 or 62.13 (9), (9a), or (10), 1975 stats., on March 30, 1978 shall be continued in full force and effect, on the terms and conditions under which the benefit was originally granted, regardless of whether the granting was in accordance with the law then in effect, but after that date each benefit shall be paid by the Wisconsin retirement fund and if all or a portion of the benefit was in accord with the law then in effect, that portion of the benefit shall be subject

to s. 41.23 (6). Any portion of a benefit which was not granted in accordance with the law then in effect shall not be subject to s. 41.23 (6).

**(5) RIGHTS OF ACTIVE MEMBERS.** After March 31, 1978, each member of a pension fund created under s. 61.65 or 62.13 (9), (9a), or (10), 1975 stats., who was an actively employed member of any such fund on March 31, 1978 shall continue to have benefits and obligations determined in accordance with the applicable provisions of s. 61.65 or 62.13 (9), (9a), or (10), 1975 stats., but paid by the Wisconsin retirement fund. The provisions of s. 41.11 relating to compulsory retirement shall not apply to such actively employed members.

**(6) VALUATIONS REQUIRED.** As soon as possible after March 31, 1978, the department of employe trust funds, in accordance with s. 40.02, shall arrange for an actuarial valuation as of March 31, 1978 of the liabilities of each pension fund affected by this section. The results of the valuation shall be used as the basis for the fund transfers and employer contributions required by this section.

**(7) EXCLUSION.** Notwithstanding any other provision of this section, this section shall not be applicable to any pension fund operated by a city of the 1st class in accordance with s. 62.13 (10) (h), 1975 stats.

History: 1977 c. 182, 272, 336.