

CHAPTER 42.

TEACHERS' AND STATE EMPLOYES' RETIREMENT ACTS.

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42.01 to 42.18 [Repealed by 1921 c. 459 s. 3]

42.20 Definitions. In sections 42.20 to 42.54, inclusive, unless the context otherwise requires:

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

"Fiscal year" is the year beginning July first and ending June thirtieth.

"Interest" means the actual rate earned by deposits, as certified by the annuity board.

"Junior teacher" designates a teacher who shall not have arrived at the twenty-fifth birthday anniversary on the first day of July preceding.

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

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

"Teachers college" means any college under the control and management of the board of regents of normal schools.

"Prior service" means service rendered as a teacher in the public schools, the teachers colleges or the university, prior to July 8, 1921.

"Public schools" means all schools supported wholly or in part by public funds, and under the control and management of this state, or any subdivision thereof, empowered by law to employ teachers, except schools under the control and management of the board of regents of normal schools or the regents of the university of Wisconsin and except schools in cities of the first class included under section 38.24.

"Required deposit" means the deduction in accordance with sections 42.40 and 42.41 (1) from the compensation received by a senior teacher deposited in the retirement deposit fund.

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

"Senior teacher" designates a teacher who shall have arrived at the twenty-fifth birthday anniversary on the first day of July preceding.

"State deposit" means the deposit made by the state in the retirement deposit fund on behalf of any member.

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

"Teaching" includes the exercise of any educational function for compensation, in any of the public schools, the teachers colleges, or the university, or in any school, college, department or institution, within or without this state, in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity.

"University" means any college, school or department under the control and management of the regents of the university of Wisconsin.

"Year of teaching experience" means a fiscal year during which the teacher was employed as a teacher not less than a full school year. [43.08 (3); 1945 c. 20; 1947 c. 463, 614]

Note: Bank deposits of teachers' retirement fund made by state annuity and investment board under this chapter are not to be added to general deposits of state of Wisconsin in same banks for purpose of computing \$5000 insurance coverage by FDIC, since such deposits by virtue of vested rights of teachers therein are not made by state in same capacity as are general state deposits. 29 Atty. Gen. 325.

42.21 Title of act; administration of. This act, consisting of sections 42.20 to 42.54 and all amendments thereto, shall be known as the "State Retirement Law." The "State Retirement System" hereby established shall be administered by and under the "State Annuity and Investment Board" through the "Public School Retirement Board," representing the "Public School Retirement Association," "The Normal School Retirement Board," representing the "Normal School Retirement Association," and the "University Retirement Board," representing the "University Retirement Association." A report for each fiscal year shall annually be made to the governor by the state annuity and investment board in substantially the form and manner required for life insurance companies, and shall be filed with and audited by the commissioner of insurance. Such report shall include the reports of the several retirement boards. An examination shall be made at least once in each three years and oftener as requested by the chairman of the state annuity and investment board for which purpose the commissioner of insurance shall have the same powers with respect thereto as provided in the case of life insurance companies. The actual cost of such examination, including the per diem of examiners, shall be certified by and shall be paid to the commissioner of insurance by the state annuity and investment board and added to the appropriation provided for in subsection (1) of section 20.55. [1935 c. 158; 1939 c. 352]

42.22, 42.23 [Repealed by 1929 c. 491 s. 1]

42.23 Refunds. The state annuity and investment board may refund any money paid in error into any of the funds of the state retirement system, including money paid in error by an employer. To effect such a refund the director of investments shall certify to the director of budget and accounts the name of each person entitled to a refund and the amount thereof. Thereupon, and notwithstanding section 20.06, the director of budget and accounts shall draw his warrant for the amount and in favor of the person so certified, and the state treasurer shall pay the same and charge it to the appropriation made by section 20.725 (4). [1945 c. 274; 1947 c. 9]

42.24 Treasurer; deposit of securities. The state treasurer shall be ex officio treasurer of the state annuity and investment board and of the state retirement system, and shall give an additional bond in such amount and with such corporate sureties as shall be required and approved by the state annuity and investment board, the cost of which shall be borne by said board. Any of the securities purchased by the state annuity and investment board for any of the funds whose investment is under the control of said board may be deposited by the state annuity and investment board or the state treasurer in vaults or other safe depositories outside of the office of the state treasurer, and either in or outside of the state of Wisconsin, but a safe-keeping receipt shall be delivered to the state treasurer for all securities so deposited. Every such safe-keeping receipt shall describe the securities covered thereby and be payable on demand without conditions to the state annuity and investment board or to any designated fund under the control of said board or to the state treasurer. [1945 c. 274]

Note: State treasurer may not require indemnity bond before paying out money on drafts issued by annuity board to replace drafts which were stolen from representative of annuity board, payment on which has been stopped. 20 Atty. Gen. 384. State treasurer is merely custodian of funds and securities of annuity board and state retirement system and must make such disposition of funds and securities deposited with him as may be directed by annuity board. (Stats. 1931) 22 Atty. Gen. 365.

42.25 Public school retirement association. The public school retirement association shall include as members all senior teachers in the public schools and all teachers and former teachers in the public schools who have a credit in the retirement deposit fund or have a reserve in the annuity reserve fund or who shall be entitled to a present or future benefit under the teachers' insurance and retirement law.

42.26 Public school retirement board. The public school retirement board shall consist of 5 board members. On July 8, 1921, the 3 elected members of the board of trustees of the teachers' insurance and retirement fund, with 2 members to be appointed by the governor, shall become the public school retirement board. The board members appointed by the governor shall serve for terms ending respectively one each on the first day of January in the years 1922 and 1923, and the other board members shall serve until

the expiration of the terms for which they were originally elected. The terms of board members shall thereafter be 3 years. [43.08 (3)]

42.27 Normal school retirement association. The normal school retirement association shall include as members all senior teachers in the teachers colleges and all teachers and former teachers in the teachers colleges who have a credit in the retirement deposit fund or have a reserve in the annuity reserve fund. [1945 c. 20]

42.28 University retirement association. The university retirement association shall include as members all senior teachers in the university and all teachers and former teachers in the university who have a credit in the retirement deposit fund or have a reserve in the annuity reserve fund, but shall exclude all teachers at the university below the grade of instructor and all teachers who are or may be entitled to any benefit from the Carnegie foundation for the advancement of teaching under any plan in force prior to the seventeenth day of November, 1915.

42.29 University and normal retirement boards. The normal school retirement board and the university retirement board shall each consist of five members. The terms of two members of each board shall expire in 1922, two in 1923 and one in 1924, and thereafter the terms of board members shall be three years. All terms shall expire on the first day of January. [1943 c. 275 s. 15]

42.30 Election of board members by association. The members of each retirement association respectively shall annually elect board members to fill the term beginning the succeeding first day of January. Such election shall be held in such manner and at such time as shall be prescribed in a by-law adopted at the preceding annual election. In the absence of such by-law such election shall be held at such time and in such manner as prescribed in a by-law adopted by the retirement board having jurisdiction, with the approval of the annuity board. Vacancies shall be filled by the remaining board members for the unexpired term. Each retirement board shall annually elect one of their number chairman. Regular meetings shall be held at such times and places as the board may determine and special meetings may be called by the chairman or by any two board members. Three members shall constitute a quorum. Unexcused absence of any board member from three consecutive meetings shall terminate his membership. Absence may be excused only by a unanimous vote at the meeting from which such member is absent.

42.31 State annuity and investment board; organization. (1) The state annuity and investment board from time to time shall adopt such by-laws and make such rules for the transaction of the business of the state retirement system and for the control of the several funds hereby created and the payment of the benefits hereby provided as it shall deem necessary and proper and shall perform all duties necessary or convenient for putting into effect and carrying on the state retirement system.

(2) The state annuity and investment board shall employ such actuarial, legal, medical or other technical service and such clerical and other services as may be necessary, fix the compensation therefor, and may allow actual and necessary expenses incurred in the performance of duty.

42.32 Funds, investment. The annuity and investment board shall receive, hold, invest and pay out according to law, all deposits by the members and by the state and all accretions thereto and other moneys belonging to the several funds. The funds shall be invested in securities in which domestic life insurance companies are authorized to invest their assets. In making loans, preference shall be given to applications in the following order:

(1) For small loans on improved farm property, at a rate of interest not exceeding five per cent per annum but subject to annual reduction of principal through long terms not exceeding fifty years, except that for the first three years payments on the principal need not be required.

(2) For loans to co-operative associations and mutual organizations, on mortgages held or issued by them.

(3) For loans to town mutual insurance companies on mortgages held or issued by them.

(4) For all other types of loans authorized by section 25.17. [1933 c. 126; 1945 c. 274]

42.33 Assets, benefits, fund transfers. (1) The annuity board shall at all times maintain assets:

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

(b) In the "Retirement Deposit Fund" equal to the liabilities for deposits and interest accretions;

(c) In the "Contingent Fund" as follows: The assets held in the contingent fund shall as of June 30 of each year be at least equal to the following ratios to the present value of all future payments of benefits from the contingent fund, namely: The actual percentage of such assets to such present value on June 30, 1922, which percentage shall be increased by 2-1/2 per cent for each year thereafter, so that such assets shall equal such present value in not exceeding 40 years from June 30, 1922.

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

(3) For the purpose of determining the actual cost of annuities and other benefits based upon life contingencies, the annuity board shall combine the mortality experience of the contingent fund and the annuity reserve fund, and shall annually apportion, distribute and transfer the cost of such benefits between the said funds in accordance with such combined mortality experience.

(4) The annuity board may from time to time transfer from the contingent fund to the annuity reserve fund amounts not exceeding in the aggregate at any time five per cent of the then net present value of the prospective benefit payments then chargeable to the annuity reserve fund; provided, that no distribution of gains and savings shall be made from the annuity reserve fund until all of such sums transferred shall have been repaid to the contingent fund with interest. [1945 c. 274]

Note: When net interest yield on annuity reserve fund and contingent fund of state retirement system is less than rate at which annuities have been granted and hence reserves are insufficient, annuity board may create supplemental reserve in annuity reserve fund out of sums transferred thereto from reserve for contingencies, and may also create supplemental reserve in contingent fund by requisitioning sum in addition to normal requirement under 71.26 (6) and (7), so that reserves in said funds may be built up to point where they can be valued at net interest rate which they are actually earning. 32 Atty. Gen. 295.

42.34 Annuity board to fix annuities. The state annuity and investment board shall make such investigations of the mortality, disability, service and compensation experience of the several funds as shall be necessary. On the basis of such investigation the annuity board shall determine, adopt and certify the rates at which the annuities and other benefits shall be granted. The rates shall be adequate to provide for all benefits as near as may be at actual cost, but shall not be less than the rates based on the minimum standard prescribed by law for granting annuities in this state. No revision of rates shall affect adversely the rights of any beneficiary or annuitant under an application made prior to the date when such revision becomes effective. The state annuity and investment board shall from time to time order and make such distribution of gains and savings as it may deem equitable. [1945 c. 274]

42.35 Classification, exceptions. (1) Members of each retirement association are classified as follows:

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

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

Class C. All members not included in Class A or in Class B.

(2) Persons residing outside of the United States and teaching temporarily in the state of Wisconsin shall not come under the provisions of the state retirement system. [43.08 (3); 1945 c. 20]

42.36 Retirement boards to adopt rules, etc. With the approval of the state annuity and investment board, each retirement board shall adopt such by-laws and rules as it may find necessary. The director of investments shall be the secretary of the several retirement boards and furnish all necessary actuarial, stenographic, clerical and other services for said boards at the expense of the state annuity and investment board.

42.37 Retirement boards, duties. Each retirement board shall:

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

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

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

(4) Furnish to any member upon written request not oftener than once in any year a statement of the account of the member.

(5) Perform any duties required of it by the annuity board.

Note: See note to 18.01, citing 31 Atty. Gen. 195.

42.38 Review of acts of retirement boards. All acts of any retirement board shall be subject to review, reversal, modification or approval by the annuity board, on their own motion or on complaint, under such rules as it may prescribe. Any teacher or other person aggrieved by any action of any retirement board may appeal to, and have the same reviewed by, the annuity board under such rules as it shall prescribe.

42.39 Reports to be furnished boards. Every employer shall furnish to the state annuity and investment board and to the retirement boards such reports and such information as any of said boards may require, and the state superintendent of public instruction and the county, district and city superintendents shall give such aid and co-operation in furnishing or obtaining any such reports or information, as may be required by any of said boards.

42.40 Required deposits. Each senior teacher shall make a deposit in the retirement deposit fund equal to 6 per cent of all compensation received for teaching service performed by such teacher. Any member, or any person on behalf of any member, may make additional deposits whenever said member has any credits in the retirement deposit fund. All amounts deposited by or on behalf of any teacher shall be held for the benefit of the individual teacher in the retirement deposit fund for the purpose of providing an annuity or other benefit as provided by sections 42.20 to 42.54. [1945 c. 274; 1947 c. 463]

42.41 Deductions from salaries; pay roll. (1) Every employer shall deduct and withhold from the compensation as a teacher of each senior teacher on each and every pay roll for each and every pay roll period hereafter 6 per cent of the compensation of such senior teacher, which is paid by such employer. Any person or officer whose duty it is to prepare the pay roll for the payment of any of said teachers who receive their salaries from the state treasury shall, on each such pay roll, indicate the entire monthly salary of each teacher, the amount to be paid such teacher, and the amount, if any, to be deducted for the retirement deposit fund, and shall indicate on said pay roll the total of such deductions as the amount to be paid to the retirement deposit fund.

(2) Whenever deductions shall be made from compensation on any pay roll the employer shall immediately send to the retirement board having jurisdiction a copy of such pay roll in such form as approved by such retirement board with a remittance payable to the order of the treasurer of the state of Wisconsin for all deductions from the compensation of teachers on such pay roll. Junior teachers for whom no deduction is made may be omitted from such copy of the pay roll. The remittances may be by draft, money order or check or otherwise according to rule adopted by said board. A junior teacher may or may not make deposits as the teacher may elect.

(3) The retirement board having jurisdiction shall immediately transmit to the state treasurer all payments received and shall audit the pay rolls of all employers and shall determine the amount deductible from the compensation of members on each pay roll and shall certify to the annuity board the amounts so received. [1945 c. 274; 1947 c. 463]

42.42 Information to retirement board. (1) **PRIOR CONTRACTS.** Every contract of employment as a teacher made after July 8, 1921 shall specify that it is subject to the provisions of the state retirement law, and give the date of the birth of the teacher, and such other information as the retirement board having jurisdiction may require for the identification of the teacher. In any case when such contract was made before July 1, 1947 no deduction without the consent of the teacher shall be made in excess of the deduction authorized when the contract was made.

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

(3) **INFORMATION TO BE FURNISHED BOARD BY TEACHERS.** Upon receiving notice of the employment of a senior teacher for the first time, the retirement board having jurisdiction shall immediately mail to the teacher a blank calling for such information as the board may require for the identification of the teacher and the determination of the state deposit and other rights of the teacher, which blank properly filled shall be returned to the board promptly. The state deposit for the fiscal year shall not be made for any teacher unless such information is received on or before June thirtieth of such year.

(4) **CERTIFICATE TO TEACHER BY BOARD.** Each retirement board shall issue to every member a certificate of membership, which shall contain such information as, with the information derived from the pay roll, shall be necessary to determine the state deposit on behalf of such member and shall be in such form as the annuity board shall prescribe. [43.08 (3); 1947 c. 463]

42.43 Employers' duties as to funds. Every employer shall be responsible for the payment to the retirement board having jurisdiction of the required deposits to be made by every senior teacher in the service of such employer. No employer shall, without the consent of the member, withhold or deduct from any member's compensation on any pay roll any amount in excess of the required deduction for the period covered by such pay roll.

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

42.45 State deposit; basis. (1) The state deposit on behalf of each teacher shall be an amount equal to the following percentage upon the required deposit made by such teacher during the fiscal year, namely, to 50 per cent of the required deposit add 5 per cent of the required deposit for each year of teaching experience excluding the year for which deposit is made, and deduct one per cent of the required deposit for each \$100 of compensation received during the fiscal year for teaching service in excess of \$1,200, provided that the total shall not exceed 200 per cent of the required deposit; provided, that in computing the state deposit, any amount of required deposit on account of any amount of annual compensation in excess of \$3,000 shall be disregarded in applying the above percentages. If the teacher received compensation for service as a teacher in the public schools, the teachers colleges, or the university, for not less than a school year during the fiscal year the state deposit shall be increased \$25.

(2) In computing the state deposit, a member who left the teaching profession to serve, and who served, the United States or any of its allies in World War I or in World War II in or with the army, including the WAACS, in or with the navy, including the WAVES, in or with the marines, including the U. S. Marine Corps Women's Reserve, in or with the coast guard, including the SPARS, or in the American Field Service, shall be credited with teaching experience for the time so served upon proof of such service and honorable discharge therefrom being furnished to the state annuity and investment board. In computing the state deposit, any member who left the teaching profession under agreement with the federal government to take training to teach, and who taught, persons in any of the aforesaid main or auxiliary branches of the United States military service during World War II shall be given like credit for the time spent in such training as well as in such teaching upon proof of such training and teaching being furnished to said board. [1943 c. 404; 1947 c. 463]

42.46 Required deposits certified and transferred. The several retirement boards shall annually, as soon after June thirtieth as shall be practicable, ascertain the teaching experience of, and the amount of required deposits made during the year by each member and on a basis thereof determine the state deposit to be made by the state in the retirement deposit fund on account of service rendered during the year for each member and shall certify the total amount of such state deposits to the annuity board. The annuity board shall thereupon certify, and on the warrant of the director of budget and accounts the state treasurer shall as of June thirtieth of such year transfer from funds appropriated for the purpose, to the retirement deposit fund, the amount of such deposits to be credited to the individual accounts of the members for the purpose of providing an annuity or other benefit as provided in this act. [1947 c. 9]

Note: Upon payment by employer of would have been made on teacher's account teacher's delinquent required deposits with had required deposits been made regularly. teachers' retirement board, state should 19 Atty. Gen. 131. credit teacher with such state deposits as

42.47 Apportionment of earnings. As of June 30 of each year the state annuity and investment board shall determine the earnings to be apportioned to the several funds. Such earnings shall be apportioned and credited to the several funds at the rates determined by the board, provided that the rate of apportionment to the annuity reserve fund shall be at least equal to the interest rate used in the valuation of the benefits payable from such fund. [1945 c. 274]

42.48 Application for benefits. A member may apply at any time to the retirement board having jurisdiction, on a form furnished by it, for a benefit. The board shall determine the benefit to be paid to the member, which shall be certified by the annuity board to the director of budget and accounts. The director of budget and accounts shall thereupon issue his warrants upon which the state treasurer shall make payments accordingly. If the benefit applied for is other than a single payment the state treasurer shall transfer the amount of the member's individual accumulation covered by the application as so certified, from the retirement deposit fund to the annuity reserve fund, and the

benefit shall thereafter be paid from the annuity reserve fund. The state treasurer shall make payment by check to the order of the member or beneficiary and the personal indorsement of the payee shall be sufficient receipt and shall constitute a statement that the payee is entitled to the payment of such benefit in full compliance with the requirements of the law. [1947 c. 9]

42.49 Withdrawals; total disability. (1) Upon the expiration of 6 months after filing application with the retirement board having jurisdiction by a member who has ceased to be employed as a teacher, and who is not on a leave of absence from a teaching position, the accumulation from the member's deposits, or any part thereof, may be withdrawn:

- (a) In a single payment, or
- (b) In such instalments as the annuity board shall approve.

(2) When a member has ceased to be employed as a teacher, and is not on a leave of absence from a teaching position, the accumulation from the member's deposits may be applied by the member as a net single premium at the rate certified by the annuity board, to the purchase of an annuity, the first payment to be made in such month and year after the application for the annuity is received by the board as the member shall direct, which annuity may be:

- (a) An annuity payable monthly to the member during life;
- (b) An annuity payable monthly to the member during life, with a guaranty of at least 180 monthly payments; and in the event of the death of the member before 180 monthly payments have been made, the remainder of the 180 monthly payments shall be continued to one beneficiary or divided equally, or as the member otherwise specified, between 2 or more beneficiaries designated by the member until payments shall have been made for 180 consecutive months after such annuity began. Unless prohibited by the member in his designation, any such beneficiary may elect at any time to receive the then present value of his benefit in a single sum. Upon the death of any designated beneficiary after he has become entitled to receive monthly payments hereunder, the then present value of his benefit shall be paid in a single sum to his estate. Upon the death of the member before payment has been made for 180 months, the then present value of the remainder of such payments shall be paid in a single sum to the estate of the member in cases where no beneficiary was designated or where the member's estate was designated as beneficiary. In the event of the death of any designated beneficiary prior to the death of the member, then upon the death of the member, the then present value of the benefit, if any, which would have been payable to said beneficiary, shall be paid in a single sum to the estate of the member; or

- (c) An annuity payable monthly to the member during life, and after death of the member, monthly payments of one-half the monthly amounts paid to the member to be continued to such beneficiary during life as the member shall have designated in the original application for a retirement allowance; or

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

- (e) In such annuity or annuities as the annuity board shall approve.

(3) When a member has ceased to be employed as a teacher, and is not on leave of absence from a teaching position, the accumulation from the state deposits may be applied by the member, except as provided in subsection (7), to the purchase of an annuity in the same manner as provided in subsection (2) (a), (b), (c) or (d), except that the first payment cannot be made before the fiftieth birthday anniversary of the member; provided, that the retirement board having jurisdiction, upon application by or on behalf of any member accompanied by satisfactory evidence that such member by reason of a physical or mental disability is incapable of rendering further satisfactory service as a teacher, may authorize such annuity payments to be made prior to the fiftieth birthday anniversary of such member. When a member ceases to be employed as a teacher after August 3, 1947 and is not on a leave of absence from a teaching position, and has attained the age of 60 years or more, and has had not less than 30 years of teaching experience of which not less than 20 years were in the public schools, the teachers colleges, or the university in this state, and has applied the entire accumulation from the member's deposits as provided in subsection (2), and the accumulation from the state deposits has been applied by the member to the purchase of an annuity as herein provided, and when the annuity purchased by such accumulation from the state deposits, together with the annuity, if any, provided for the member under section 42.51 (3), when computed as an annuity payable monthly to the member during life is less than an annuity of \$2 per month for each year of the member's teaching experience, not exceeding 35 years, in the public schools, teach-

ers colleges or university in this state, the annuity to the member shall be increased so that the member shall be paid an annuity for life equal to such annuity, or the actuarial equivalent of such life annuity. The increase in the annuity shall be paid from the contingent fund. The increased annuity herein provided shall not be available for any member who has at any time withdrawn any amount from the retirement deposit fund or received any annuity under sections 42.20 to 42.54, except that the increased annuity shall be available for any member who has withdrawn any amount from the retirement deposit fund provided that the amount withdrawn be repaid to the retirement deposit fund, with interest at the rate of 3 per cent per annum from the date of withdrawal to the date of repayment, before application is made for an annuity under this section.

(4) If a member before attaining age 50, having made required deposits for not less than a school year during each of 5 fiscal years immediately preceding, becomes physically or mentally incapacitated to such extent that the member is and will be wholly and presumably permanently unable to engage in any occupation or perform any work for compensation of financial value, and furnishes due proof thereof and that such disability has then existed for 60 days, the member shall be paid from the contingent fund an annuity during the continuance of such disability in monthly payments of \$25 each in addition to any other benefit payable to such member. The said retirement board may at any time not more than once in any year require proof of the continuance of such total disability, and if the member shall fail to furnish satisfactory proof thereof; or if it appears at any time that the member has become able to engage in any occupation for remuneration or profit, such annuity shall cease. A member who has attained age 50 having made required deposits for not less than a school year during each of 5 fiscal years immediately preceding, and becomes physically or mentally incapacitated as provided in this subsection, and furnishes due proof thereof, and that such disability has then existed for 60 days, shall be entitled to the increased annuity provided in subsection (3) provided that said member has had not less than 20 years of teaching experience in the public schools, teachers colleges, or the university, and has applied the entire accumulation from the member's deposits toward the purchase of an annuity.

(5) Any benefit payable for any month during which the member shall receive compensation as a teacher shall be withheld from the member and be paid into the retirement deposit fund to be accumulated, and to be applied, on the application of the member, as provided in the case of the accumulation from state deposits; provided, that any part of the benefit which is payable from the contingent fund shall be withheld for the benefit of the contingent fund.

(6) Any member, who prior to the thirty-sixth birthday anniversary of such member, has permanently removed from the state of Wisconsin, shall be paid the accumulation from the member's deposits, on filing with the annuity board a written request therefor and a full and complete discharge and release of all right, interest or claim on the part of such member under the state retirement law.

(7) Any member, after attaining the age of 50 years, having ceased to be employed as a teacher, and whose accumulation from state deposits does not exceed \$500 shall be paid such accumulation in a single payment upon filing an application therefor with the state annuity and investment board in such form as said board may require; provided that such payment shall be made only with, or after, the withdrawal of the accumulation from said member's own deposits.

(8) The accumulation from any state deposits made as of June 30, 1948, and thereafter, except state deposits made for teaching service under a contract existing on August 3, 1947 for any member who withdraws any part of the accumulation from the member's deposits as provided in subsection (1) before such member becomes entitled to an annuity from the accumulation of the state deposits in accordance with subsection (3), except as provided in subsection (7), shall be forfeited. Any accumulation of the state deposits so forfeited shall be credited to the general fund for the current fiscal year. [1937 c. 98; 1943 c. 404; 1945 c. 274; 1947 c. 463]

42.50 Death benefits, how paid. (1) Any member may, by written notice to the retirement board having jurisdiction, in such form as it shall approve, designate a sole beneficiary, or 2 or more beneficiaries to whom any death benefit payable at the death of the member shall be paid. The member may, from time to time, by a like written notice, change any of the aforesaid designations. If no beneficiary shall have been named by the member, or if no designated beneficiary survives the member, such death benefit shall be paid in a single sum to the estate of the member. Such death benefit shall be the full amount of the accumulation in the retirement deposit fund to the credit of the member from all member's deposits and all state deposits.

(2) Such death benefit shall be payable, as the member shall have directed, either:

(a) As an annuity payable monthly during the life of one beneficiary.

(b) As an annuity payable monthly for life to each of 2 or more beneficiaries, with the death benefit used to purchase such annuities divided as specified by the member. If the member does not specify the division of the death benefit, it shall be divided equally in the purchase of the annuities. If one or more of the designated beneficiaries dies before the member, the benefit, if any, which would have been payable to the deceased beneficiary or beneficiaries shall be payable to the surviving beneficiary or beneficiaries in equal shares.

(c) As an annuity payable monthly to one beneficiary during life, and in the event of the death of said beneficiary before 180 monthly payments have been made, the remainder of the 180 monthly payments shall be continued to one beneficiary or divided equally, or as the member otherwise specified, between 2 or more beneficiaries designated by the member until payments shall have been made for 180 consecutive months after such annuity began. Unless prohibited by the member in his designation, any secondary beneficiary hereunder may elect at any time to receive the then present value of his benefit in a single sum. In the event of the death of the primary beneficiary prior to the death of the member, then upon the death of the member, the payments shall be made to the secondary beneficiary or beneficiaries designated by the member. Upon the death of the secondary beneficiary after he has become entitled to receive monthly payments hereunder, the then present value of his benefit shall be paid in a single sum to his estate. Upon the death of a secondary beneficiary before he has become entitled to receive any payment hereunder, the amount, if any, to which he would have been entitled, shall be paid to the remaining secondary beneficiary, or to the remaining secondary beneficiaries, in equal shares, if there are 2 or more, with the other payments to said beneficiary or beneficiaries; or

(d) To one beneficiary, or divided equally or as the member otherwise specified between 2 or more beneficiaries in instalments certain or in a single sum. In the event that any beneficiary dies after he has become entitled to receive part, but has not received all, of the benefit which would be payable to him under this paragraph, the then present value of his benefit shall be paid to his estate in a single sum. If the member does not specify the division of the death benefit, it shall be divided equally in the purchase of the annuities. Where 2 or more beneficiaries are designated hereunder and one or more of the designated beneficiaries dies before the member, the benefit, if any, which would have been payable to the deceased beneficiary or beneficiaries shall be payable to the surviving beneficiary or beneficiaries in equal shares.

(3) In any case under this section where the member shall not have designated the method of payment of the death benefit, the beneficiary may elect which of the methods of payment specified in subsection (2) (a), (c) or (d) shall be used, and if the plan specified in paragraph (c) is selected, he may designate the secondary beneficiary or beneficiaries thereunder, as the member could have; in such a case where there are 2 or more beneficiaries, they may elect that the method of payment specified in subsection (2) (b) or (d) shall be used and if said beneficiaries cannot agree upon either one of such methods, the state annuity and investment board may make payment in a single sum to each beneficiary upon the expiration of 4 months after the death of the member. [1943 c. 404; 1945 c. 274]

Note: See note to art. I, sec. 12, Const., citing State ex rel. Stafford v. Annuity and Investment Board, 219 W 31, 261 NW 718.

A stipulation, and corresponding provision in a divorce judgment, for division of property and release of the husband from all claims of the wife, did not bar the divorced wife from claiming, as the designated beneficiary, the death benefit payable from the teachers' retirement fund on the death of the husband, since the wife was not thereby claiming any "property" which the husband had or which was a part of his estate on his death, and the stipulation for division of property and release of claims, not mentioning the retirement fund or the benefits payable under chapter 42, did not cover such death benefit, since the wife then, and until the husband's death, had neither "property" nor an interest or claim therein but only a

mere "expectancy" which could have been defeated by the husband had he seen fit to change the beneficiary or have the death benefit made payable to his estate, which he was not persuaded from doing by any conduct of the wife estopping her from claiming as the designated beneficiary. Wolf v. Jebe, 242 W 650, 9 NW (2d) 124.

Annuity and investment board need not recognize partial assignment of death benefit. (Stats. 1931) 22 Atty. Gen. 177.

Where member of retirement system properly designates beneficiary pursuant to 42.50, Stats. 1941, but does not direct how payment of death benefit shall be made, retirement board having jurisdiction under 42.48 may make payment of death benefit to beneficiary in any one of ways enumerated in 42.50 (2) agreed upon by said board and beneficiary. 30 Atty. Gen. 226.

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

marine or nurse in the armed forces of the United States during the world war, upon proof of such service being furnished the board.

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

(3) When any member of Class A or Class B who has taught at least twenty-five years in the public schools, the normal schools or the university shall be paid an annuity under subsection (3) of section 42.49 the annuity shall be increased by the annuity which would be granted at the rates then in force on an accumulation equivalent to the amount of the computation above defined, and such additional annuity shall be paid from the contingent fund. No accumulation from state deposits or transfer of funds shall be required in case of such additional annuity. This section shall not authorize or include any increase in or addition to the death benefit provided in section 42.50.

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

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

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

(7) Notwithstanding the provisions of section 42.54, any member of Class A who, after July 7, 1921, did not teach, and was not under contract to teach, in a position which required such member to make deposits in the state retirement system, and who has not received, and is not eligible to receive, an annuity as a result of the deposits which such members made in the teachers' insurance and retirement fund shall, by making application therefor to the state annuity and investment board, be paid in a single sum, and without interest, the amount which such member paid into such fund and did not withdraw heretofore. [1939 c. 117; 43.08 (3); 1945 c. 112]

42.52 Exemption of benefits from process. The benefits payable to, or other right and interest of any member, beneficiary, or distributee of any estate under any provision of the state retirement law shall be exempt from any tax levied by the state or any subdivision thereof, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically provided herein.

42.53 State annuity and investment board, succession. The state annuity and investment board through the public school and retirement board, on July 8, 1921, shall succeed to and be vested with all the property, rights, powers and duties, and be subject to all the obligations and liabilities, of the teachers' insurance and retirement fund and of the board of trustees of the teachers' insurance and retirement fund. [43.08 (3)]

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

42.55 [Renumbered section 38.24 by 1941 c. 213 s. 27]

42.56 [Renumbered section 38.25 by 1941 c. 213 s. 28]

42.57 (1) to (5) [Renumbered section 38.26 by 1941 c. 213 s. 29]

42.57 (6) [Repealed by 1941 c. 213 s. 30]

STATE EMPLOYES' RETIREMENT SYSTEM

[42.60 to 42.64 Stats. 1945 repealed by section 42.71 Stats. 1947]

42.65 Refund to members; credit to estate of deceased. (1) Upon the expiration of 6 months after filing an application therefor with the annuity and investment board, an employe who is not eligible for retirement and who has ceased to be employed in the state service may withdraw his deposit accumulations in the employes' savings fund. In case of the death of a member while in the state service or after leaving the state service otherwise than by retirement under sections 42.60 to 42.70, his estate or named beneficiary shall receive the deceased member's deposit accumulations; provided that where the amount payable hereunder or under section 42.64 (3) to the estate of a member or a beneficiary is less than \$200 and it appears to the annuity and investment board that there will be no administration of said estate said board, in its discretion, may apply said amount, or any part thereof, in payment of, or reimbursement for, expense incurred in connection with the last illness, or funeral, of said member or beneficiary. [1943 c. 176; 1945 c. 531]

[42.66 Stats. 1945 repealed by section 42.71 Stats. 1947]

42.67 [Repealed by 1945 c. 531]

42.68 Management of fund; investments; reserve. (1) The deposits made by members of the retirement system for state employes and all interest accretions thereto shall be known as the "employes' savings fund". Whenever an annuity has been granted under sections 42.60 to 42.70, the accumulation of the member's deposits in the employes' savings fund shall be transferred to the annuity reserve fund and the annuity payable from such member's accumulation of deposits shall thereafter be paid from the annuity reserve fund. The appropriation to pay the state pension under the state employes' retirement system shall be credited to the annuity reserve fund and pensions payable to state employes under said system shall be paid from said fund. Such funds shall be managed by the annuity and investment board and shall be invested in securities authorized by section 206.34. A separate account in the employes' savings fund shall be maintained for each member and, as of June 30 of each year, the annuity and investment board shall credit the account of each member of the retirement system for state employes, and the annuity reserve fund, exclusive of sums transferred thereto under section 42.69 (3) with interest at the actual rate earned during the fiscal year as determined by the board subject to section 20.726 (2) and section 42.68 (2). The annuity and investment board shall from time to time order and make such distribution of gains and savings as it may deem equitable.

(2) The annuity and investment board shall establish and maintain such reserve or surplus funds as the interests of the members and the future solvency of the funds of the state employes' retirement system may require. [1943 c. 176; 1945 c. 531]

42.69 Administration by annuity and investment board. (1) Sections 42.60 to 42.70 shall be administered by the annuity and investment board. No annuity shall be paid until January 1, 1944. All applications or claims for annuities or benefits or for refunds of deposits, and proofs in support of any such claims, shall be made to the annuity and investment board in such manner and form as said board may prescribe. Said board may make rules and regulations for filing, hearing and determining claims and for carrying into effect sections 42.60 to 42.70. The board shall cause to be made at least once in every 3 years after the effective date of said sections an actuarial study of the state employes' retirement system.

(2) The annuity and investment board shall have control of the investment and collection of the principal and interest of the state employes' retirement fund the same as of other funds of the state as provided in section 25.17 (1) and to dispose of securities as provided in section 25.17 (2). Out of the income of said fund the annuity and investment board shall be reimbursed at the end of each fiscal year for the expenses incurred by the board in connection with the investment of said fund and the collection of the principal and interest.

(3) When the annuity and investment board has determined the amount of pensions payable from the funds specified in section 20.726 (1) for a given month, it shall certify to the director of budget and accounts the total amount so payable and the director of budget and accounts shall thereupon transfer the amount so certified to the state employes' retirement fund.

(4) Annually, within 90 days after June 30, the annuity and investment board shall file with the commissioner of insurance a full report of the operation of the state em-

ployes' retirement system for the past fiscal year and the financial condition of the system. The board shall certify to the governor on December 1 of each even-numbered year and to the legislature within 30 days after the beginning of each regular session the amount required to pay the state's contribution under section 42.63, for the next succeeding biennium. The commissioner of insurance shall at least once every 2 years examine the state employes' retirement system and make a report to the governor and to the annuity and investment board. [1943 c. 176; 1945 c. 586; 1947 c. 9]

42.70 Exemption of funds and benefits from taxation, execution and assignment.

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

(1) The annuity and investment board may retain out of the proper annuity or other benefit such amount as said board in its discretion may determine to be necessary for the purpose of reimbursing the fund for any money paid to the annuitant, member, beneficiary or estate through misrepresentation, fraud or error.

(2) In all cases in which any amounts become payable to a minor or to a person adjudged insane, or mentally incompetent, the annuity and investment board, in its discretion, may waive guardianship proceedings, and pay such amounts to the person providing for, or caring for, such minor, or to the wife, parent, or other person providing for, or caring for, such insane or incompetent person. [1943 c. 176; 1945 c. 531]

42.71 State employes' retirement system transferred. (1) Effective January 1, 1948, sections 42.60, 42.61, 42.62, 42.63, 42.64 and 42.66 are repealed, provided, however, that said sections may be referred to for the purpose of determining the applicability of the remaining portions of sections 42.60 to 42.70 which constituted the state employes' retirement system. It is the intention of the legislature that said system shall continue to function, substantially as before, until its liabilities are discharged and its assets liquidated except that:

(a) After December 31, 1947, no person may acquire membership in said system, and no new accounts may be established, or further deposits made therein, based on wages or salary earned subsequent to said date.

(b) No copies of pay rolls shall be submitted to the state annuity and investment board covering sums earned after December 31, 1947.

(c) After December 31, 1947, no person may retire or be retired under said system; except that notwithstanding any other provisions of this subsection or sections 66.90 to 66.919, a member of the state employes' retirement system who can and does elect to retire under said system effective January 1, 1948, or a member thereof who shall have attained age 70 or more prior to January 1, 1948, and whose services shall not have been extended to January 31, 1948, pursuant to section 42.62 (4) shall be retired under the provisions of said system effective January 1, 1948, unless such member shall be an appointed state officer. A member of the state employes' retirement system who shall have attained age 70 or more prior to January 1, 1948, and whose services shall have been extended to January 31, 1948, pursuant to section 42.62 (4) shall be retired under the provisions of sections 66.90 to 66.919 effective January 31, 1948, notwithstanding the provisions of section 66.906 (1) (a) and (b) unless such person can and does elect to retire under the provisions of the state employes' retirement system effective January 1, 1948, or the first day of some month prior thereto, unless such person is an appointed state officer.

(d) Persons who are active members of the state employes' retirement fund on December 31, 1947 shall be or become participating employes under sections 66.90 to 66.919 in accordance with section 66.903 (1) (a) 4 and their accounts and a corresponding amount of assets in the state employes' retirement fund shall be transferred to the Wisconsin retirement fund in accordance with section 66.904 (1) (a) 4. [1947 c. 206, 362, 556, 674]