

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 616

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JOHNSON.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

Read 2nd time January 6, 2000, and referred to the Committee on Pensions and General Laws.

Reported from the Committee February 7, 2000, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 15, 2000. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

2445S.02P

AN ACT

To repeal sections 70.605, 70.661, 70.680 and 70.685, RSMo 1994, and sections 70.655 and 70.675, RSMo Supp. 1999, relating to local government employees' retirement system, and to enact in lieu thereof six new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 70.605, 70.661, 70.680 and 70.685, RSMo 1994, and sections 70.655 and 70.675, RSMo Supp. 1999, are repealed and six new sections enacted in lieu thereof, to be known as sections 70.605, 70.655, 70.661, 70.675, 70.680 and 70.685, to read as follows:

70.605. 1. For the purpose of providing for the retirement or pensioning of the officers and employees and the widows and children of deceased officers and employees of any political subdivision of the state, there is hereby created and established a retirement system which shall be a body corporate, which shall be under the management of a board of trustees herein described, and shall be known as the "Missouri Local Government Employees' Retirement System". Such system may sue and be sued, transact business, invest funds, and hold cash, securities, and other property. The system shall begin operations on the first day of the calendar month next following sixty days after the date the board of trustees has received certification from ten political subdivisions that they have elected to become employers.

2. The general administration and the responsibility for the proper operation of the system

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

is vested in a board of trustees of seven persons: three persons to be elected as trustees by the members of the system; three persons to be elected trustees by the governing bodies of employers; and one person, to be appointed by the governor, who is not a member, retirant, or beneficiary of the system and who is not a member of the governing body of any political subdivision.

3. Trustees shall be chosen for terms of four years from the first day of January next following their election or appointment, except that of the first board shall all be appointed by the governor by and with the consent of the senate, as follows:

(1) Three persons who are officers or officials of political subdivisions, one for a term of three years, one for a term of two years, and one for a term of one year; and

(2) Three persons who are employees of political subdivisions and who would, if the subdivision by which they are employed becomes an employer, be eligible as members, one for a term of three years, one for a term of two years, and one for a term of one year; and

(3) That person appointed by the governor under the provisions of subsection 2 of this section. All the members of the first board shall take office as soon as appointed by the governor, but their terms shall be computed from the first day of January next following their appointment, and only one member may be from any political subdivision or be a policeman or fireman.

4. Successor trustees elected or appointed as member trustees shall be members of the retirement system; provided, that not more than one member trustee shall be employed by any one employer, and not more than one member trustee shall be a policeman, and not more than one member trustee shall be a fireman.

5. Successor trustees elected as employer trustees shall be elected or appointed officials of employers and shall not be members of the retirement system; provided, that not more than one employer trustee shall be from any one employer.

6. An annual meeting of the retirement system shall be called by the board in the last calendar quarter of each year in Jefferson City, or at such place as the board shall determine, for the purpose of electing trustees and to transact such other business as may be required for the proper operation of the system. Notice of such meeting shall be sent by registered mail to the clerk or secretary of each employer not less than thirty days prior to the date of such meeting. The governing body of each employer shall certify to the board the name of one delegate who shall be an officer of the employer, and the members of the employer shall certify to the board a member of the employer to represent such employer at such meeting. The delegate certified as member delegate shall be elected by secret ballot by the members of such employer, and the clerk or secretary of each employer shall be charged with the duty of conducting such election in a manner which will permit each member to vote in such election. Under such rules and regulations as the board shall adopt, approved by the delegates, the member delegates shall elect a member trustee for each such position on the board to be filled, and the officer delegates shall elect an employer trustee for each such position on the board to be filled.

7. In the event any member trustee ceases to be a member of the retirement system, or any employer trustee ceases to be an appointed or elected official of an employer, or becomes a member of the retirement system, or if the trustee appointed by the governor becomes a member of the retirement system or an elected or appointed official of a political subdivision, or if any trustee fails to attend three consecutive meetings of the board, unless in each case excused for cause by the remaining trustees attending such meeting or meetings, he shall be considered as having resigned from the board and the board shall, by resolution, declare his office of trustee vacated. If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled; provided, however, that the remaining trustees may fill employer and member trustee vacancies on the board until the next annual meeting.

8. Each trustee shall be commissioned by the governor, and before entering upon the duties of his office, shall take and subscribe to an oath or affirmation to support the Constitution of the United States, and of the state of Missouri, and to demean himself faithfully in his office. Such oath as subscribed to shall be filed in the office of the secretary of state of this state.

9. Each trustee shall be entitled to one vote in the board of trustees. Four votes shall be necessary for a decision by the trustees at any meeting of the board of trustees. Four trustees, of whom at least two shall be member trustees and at least two shall be employer trustees, shall constitute a quorum at any meeting of the board. Unless otherwise expressly provided herein, a meeting need not be called or held to make any decision on a matter before the board. Each member must be sent by the executive secretary, a copy of the matter to be decided with full information from the files of the board. The concurring decisions of four trustees may decide the issue by signing a document declaring their decision and sending the written instrument to the executive secretary, provided that no other trustee shall send a dissenting decision to the executive secretary within fifteen days after the document and information was mailed to him. If any trustee is not in agreement with the four trustees, the matter is to be passed on at a regular board meeting or a special meeting called for that purpose. The board shall hold regular meetings at least once each quarter, the dates of these meetings to be designated in the rules and regulations adopted by the board. Other meetings as deemed necessary may be called by the chairman or by any four trustees acting jointly.

10. The board of trustees shall elect one of their number as chairman, and one of their number as vice chairman, and shall employ an executive secretary, not one of their number, who shall be the executive officer of the board. Other employees of the board shall be chosen only upon the recommendation of the executive secretary.

11. The board shall appoint an actuary or a firm of actuaries as technical advisor to the board on matters regarding the operation of the system on an actuarial basis. The actuary or actuaries shall perform such duties as are required of him or them under sections 70.600 to 70.760,

and as are from time to time required by the board.

12. The board may appoint an attorney at law or firm of attorneys at law to be the legal advisor of the board and to represent the board in all legal proceedings.

13. The board may appoint an investment counselor to be the investment advisor of the board.

14. The board shall from time to time, after receiving the advice of its actuary, adopt such mortality and other tables of experience, and a rate or rates of regular interest, as shall be necessary for the actuarial requirements of the system, and shall require its executive secretary to keep in convenient form such data as shall be necessary for actuarial investigations of the experience of the system, and such data as shall be necessary for the annual actuarial valuations of the system.

15. The board shall keep a record of its proceedings, which shall be open to public inspection. It shall prepare annually and render to each employer a report showing the financial condition of the system as of the preceding June thirtieth. The report shall contain, but shall not be limited to, a financial balance sheet; a statement of income and disbursements; a detailed statement of investments acquired and disposed of during the year, together with a detailed statement of the annual rates of investment income from all assets and from each type of investment; an actuarial balance sheet prepared by means of the last valuation of the system, and such other data as the board shall deem necessary or desirable for a proper understanding of the condition of the system.

16. The board of trustees shall, after reasonable notice to all interested parties, **conduct administrative hearings to** hear and decide questions arising from the administration of sections 70.600 to [70.760] **70.755; except, that such hearings may be conducted by a hearing officer who shall be appointed by the board. The hearing officer shall preside at the hearing and hear all evidence and rule on the admissibility of evidence. The hearing officer shall make recommended findings of fact and may make recommended conclusions of law to the board. All final orders or determinations or other final actions by the board shall be approved in writing by at least four members of the board. Any board member approving in writing any final order, determination, or other final action, who did not attend the hearing, shall do so only after certifying that he or she reviewed all exhibits and read the entire transcript of the hearing.** Within thirty days after a decision or order **or final action of the board**, any member, retirant, beneficiary or political subdivision adversely affected by that determination or order **or final action** may take an appeal under the provisions of chapter 536, RSMo.

17. The board shall arrange for adequate surety bonds covering the executive secretary and any other custodian of the funds or investments of the board. When approved by the board, said bonds shall be deposited in the office of the secretary of state.

18. The board shall arrange for annual audits of the records and accounts of the system by a certified public accountant or by a firm of certified public accountants. The state auditor shall examine such audits at least once every three years and report to the board and the governor.

19. The headquarters of the retirement system shall be in Jefferson City.

20. The board of trustees shall serve as trustees without compensation for their services as such; except that each trustee shall be paid for any necessary expenses incurred in attending meetings of the board or in the performance of other duties authorized by the board.

21. Subject to the limitations of sections 70.600 to 70.760, the board shall formulate and adopt rules and regulations for the government of its own proceedings and for the administration of the retirement system.

70.655. 1. Upon a member's retirement he shall receive an allowance for life in accordance with the applicable benefit program elected by his employer, as follows:

(1) Benefit program L-1. A member with credited service covered by benefit program L-1 shall receive an allowance for life equal to one percent of his final average salary multiplied by his number of years of such credited service.

(2) Benefit program L-3. A member with credited service covered by benefit program L-3 shall receive an allowance for life equal to one and one-quarter percent of his final average salary multiplied by his number of years of such credited service.

(3) Benefit program LT-4. A member with credited service covered by benefit program LT-4 shall receive an allowance for life equal to one percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger [(i) than the federal Social Security's minimum age for an immediate retirement benefit and (ii)] than age sixty-two, then such member shall receive a temporary allowance equal to one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the end of the calendar month in which the [earliest] **earlier** of the following events occurs: such member's death; [or his attainment of such Social Security minimum age;] or his attainment of age sixty-two.

(4) Benefit program LT-5. A member with credited service covered by benefit program LT-5 shall receive an allowance for life equal to one and one-quarter percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger [(i) than the federal Social Security's minimum age for an immediate retirement benefit and (ii)] than age sixty-two, then such member shall receive a temporary allowance equal to three-quarters of one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the end of the calendar month in which the [earliest] **earlier** of the following events occurs: such

member's death; [or his attainment of such Social Security minimum age;] or his attainment of age sixty-two.

(5) Benefit program L-6. [Benefit program L-6 may cover employment in a position only if such position is not concurrently covered by federal social security; in addition, if such position was previously covered by federal Social Security, benefit program L-6 may cover only employment rendered after cessation of federal Social Security coverage.] A member with credited service covered by benefit program L-6 shall receive an allowance for life equal to two percent of his final average salary multiplied by his number of years of such credited service.

(6) Benefit program L-7. A member with credited service covered by benefit program L-7 shall receive an allowance for life equal to one and one-half percent of his final average salary multiplied by his number of years of such credited service.

(7) Benefit program LT-8. A member with credited service covered by benefit program LT-8 shall receive an allowance for life equal to one and one-half percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger [(i) than the federal Social Security's minimum age for an immediate retirement benefit and (ii)] than age sixty-two, then such member shall receive a temporary allowance equal to one-half of one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the end of the calendar month in which the [earliest] **earlier** of the following events occurs: such member's death; [or his attainment of such Social Security minimum age;] or his attainment of age sixty-two.

(8) Benefit program LT-4(65). A member with credited service covered by benefit program LT-4(65) shall receive an allowance for life equal to one percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger than age sixty-five, then such member shall receive a temporary allowance equal to one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the end of the calendar month in which the earlier of the following events occurs: such member's death; or his attainment of age sixty-five.

(9) Benefit program LT-5(65). A member with credited service covered by benefit program LT-5(65) shall receive an allowance for life equal to one and one-quarter percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger than age sixty-five, then such member shall receive a temporary allowance equal to three-quarters of one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the

end of the calendar month in which the earlier of the following events occurs: such member's death; or his attainment of age sixty-five.

(10) Benefit program LT-8(65). A member with credited service covered by benefit program LT-8(65) shall receive an allowance for life equal to one and one-half percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger than age sixty-five, then such member shall receive a temporary allowance equal to one-half of one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the end of the calendar month in which the earlier of the following events occurs: such member's death; or his attainment of age sixty-five.

(11) Benefit program L-9. A member with credited service covered by benefit program L-9 shall receive an allowance for life equal to one and six-tenths percent of his final average salary multiplied by his number of years of such credited service.

(12) Benefit program LT-10(65). A member with credited service covered by benefit program LT-10(65) shall receive an allowance for life equal to one and six-tenths percent of his final average salary multiplied by his number of years of such credited service. In addition, if such member is retiring as provided in section 70.645 or section 70.650 or section 70.670, and if such member's age at retirement is younger than age sixty-five, then such member shall receive a temporary allowance equal to four-tenths of one percent of his final average salary multiplied by his number of years of such credited service. Such temporary allowance shall terminate at the end of the calendar month in which the earlier of the following events occurs: such member's death; or his attainment of age sixty-five.

(13) Benefit program L-11. Benefit program L-11 may cover employment in a position only if such position is not concurrently covered by federal social security; in addition, if such position was previously covered by federal social security, benefit program L-11 may cover only employment rendered after cessation of federal social security coverage. A member with credited service covered by benefit program L-11 shall receive an allowance for life equal to two and one-half percent of his final average salary multiplied by his number of years of such credited service.

2. If each portion of a member's credited service is not covered by the same benefit program, then his total allowance for life shall be the total of the allowance for life determined under each applicable benefit program.

3. Each employer shall have the credited service of each of its members covered by benefit program L-1 provided for in this section unless such employer shall have elected another benefit program provided for in this section.

4. Except as otherwise provided in this subsection, each political subdivision, by majority

vote of its governing body, may elect from time to time to cover its members, whose political subdivision employment is concurrently covered by federal Social Security, under one of the benefit programs provided for in this section. Each political subdivision, by majority vote of its governing body, may elect from time to time to cover its members, whose political subdivision employment is not concurrently covered by federal Social Security, under one of the benefit programs provided for in this section. The clerk or secretary of the political subdivision shall certify the election of the benefit program to the board within ten days after such vote. The effective date of the political subdivision's benefit program is the first day of the calendar month specified by such governing body, or the first day of the calendar month next following receipt by the board of the certification of election of benefit program, or the effective date of the political subdivision becoming an employer, whichever is the latest. Such election of benefit program may be changed from time to time by such vote, but not more often than biennially. If such changed benefit program provides larger allowances than the benefit program previously in effect, then such larger benefit program shall be applicable to the past and future employment with the employer by present and future employees. If such changed benefit program provides smaller allowances than the benefit program previously in effect, then such changed benefit program shall be applicable only to credited service for employment rendered from and after the effective date of such change. After August 28, 1994, political subdivisions shall not elect coverage under benefit program LT-4, benefit program LT-5, or benefit program LT-8.

5. Should an employer change its election of benefit program as provided in this section, the employer contributions shall be correspondingly changed effective the same date as the benefit program change.

6. The limitation on increases in an employer's contribution provided by subsection 6 of section 70.730 shall not apply to any contribution increase resulting from an employer electing a benefit program which provides larger allowances.

7. Subject to the provisions of subsections 9 and 10 of this section, for an allowance becoming effective on September 28, 1975, or later, and beginning with the October first which is at least twelve full months after the effective date of the allowance, the amount of the allowance shall be redetermined effective each October first and such redetermined amount shall be payable for the ensuing year. Subject to the limitations stated in the next sentence, such redetermined amount shall be the amount of the allowance otherwise payable multiplied by the following percent: One hundred percent, plus two percent for each full year (excluding any fraction of a year) in the period from the effective date of the allowance to the current October first. In no event shall such redetermined amount (1) be less than the amount of the allowance otherwise payable nor (2) be more than the amount of the allowance otherwise payable multiplied by the following fraction: The numerator shall be the Consumer Price Index for the month of June immediately preceding such October first (but in no event an amount less than the denominator

below) and; the denominator shall be the Consumer Price Index for the month of June immediately preceding the effective date of the allowance. As used herein, "Consumer Price Index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, as determined by the United States Department of Labor and in effect January 1, 1975; provided, should such Consumer Price Index be restructured subsequent to 1974 in a manner materially changing its character, the board shall change the application of the Consumer Price Index so that as far as is practicable the 1975 intent of the use of the Consumer Price Index shall be continued. As used herein "the amount of the allowance otherwise payable" means the amount of the allowance which would be payable without regard to these provisions redetermining allowance amounts after retirement.

8. Subject to the provisions of subsections 9 and 10 of this section, for an allowance becoming effective on September 28, 1975, or later, the maximum allowance payable under the provisions of section 70.685 [and under the provisions of subsection 6 of section 70.680] shall be redetermined each October first in the same manner as an allowance is redetermined under the provisions of subsection 7 of this section.

9. (1) The system establishes reserves for the payment of future allowances to retirants and beneficiaries. Should the board determine, after consulting with the actuary, that the established reserves are more than sufficient to provide such allowances, the board may increase the annual increase rate provided for in subsections 7 and 8 of this section, as it applies to any allowance payable, but in no event shall the total of all redetermined amounts as of October first of any year be greater than one hundred four percent of the allowances which would have been payable that October first without such redeterminations; provided, as of any redetermination date the same annual increase rate shall be applied to all allowances with effective dates in the range of November first to October first of the following year. The board may extend the provisions of subsections 7 and 8 of this section to allowances which became effective before September 28, 1975; provided, such an action by the board shall not increase an employer contribution rate then in effect;

(2) After August 28, 1993, the annual increase rate established by this subsection shall be a compound rate, compounded annually, and the four percent annual maximum rate shall also be a compound rate, compounded annually; provided, the use of such compounding shall not begin until October 1, 1993, and shall not affect redeterminations made prior to that date.

10. Should the board determine that the provisions of subsections 7, 8 and 9 of this section are jeopardizing the financial solvency of the system, the board shall suspend these provisions redetermining allowance amounts after retirement for such periods of time as the board deems appropriate.

70.661. 1. If a member with five or more years of credited service dies before retirement while an employee, the [applicable] benefits provided in subsections 2, 3, [and] 4 **and 5** of this section shall be paid, [subject to the provisions of section 70.685] **as applicable**.

2. **(1)** [His] **The** surviving spouse [with whom he was living and] to whom [he] **the member** was married for not less than two years immediately preceding the time of [his] **the member's** death shall receive an allowance computed in the same manner in all respects as if such member had:

[(1)] **(a)** Retired **on the first day of the month following** the date of his **or her** death with an allowance for life based upon [his] **the member's** credited service and final average salary to time of death and without reduction if [his] **the member's** age was younger than [his] **the member's** minimum service retirement age;

[(2)] **(b)** Elected option A provided for in section 70.660; and

[(3)] **(c)** Nominated such spouse as joint beneficiary under such option. [If such spouse had not attained age forty at the time of the member's death, such spouse allowance shall be payable for the remaining life of such spouse, but in no event for more than one hundred twenty months.]

(2) If the board finds that the member's death was the result of an accident that did not arise out of and in the course of his or her actual performance of duty as an employee, the requirement that the surviving spouse must have been married to the member for not less than two years immediately preceding the time of the member's death shall not apply.

3. If the board finds that the member's death was the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duty as an employee, then:

(1) Other provisions of law to the contrary notwithstanding, for the purpose of computing the amount of the allowance payable under this section and for the purpose of determining eligibility under subsection 1 of this section, credited service shall include the period from the date of the member's death to the date he or she would have attained age sixty, or the date he or she would have acquired five years of credited service, if later; and

(2) In order to be eligible for spouse benefits, the surviving spouse and the deceased member must have been married on the date of the personal injury resulting in the member's death or on the date of onset of the disease resulting in the member's death. In any case of question as to the date of onset of disease resulting in the member's death, the board shall decide the question.

[3.] 4. If a [spouse] benefit is not payable under the provisions of subsection 2 **or 3** of this section, or when such [spouse] benefit has ceased to be payable, each dependent child of the deceased member, **if any**, shall receive an allowance of an equal share of sixty percent of an allowance computed in the same manner in all respects as if such **deceased** member had retired **on the first day of the month following** the date of his **or her** death with an allowance for life based upon [his] **the member's** credited service and final average salary to time of death and

without reduction if [his] **the member's** age was younger than [his] **the member's** minimum service retirement age. A child shall be a dependent child until [his] **the child's** death or [his] marriage or [his] attainment of age eighteen, whichever occurs first; provided, the age eighteen maximum shall be extended as long as the child continues uninterruptedly being a full-time student at an accredited secondary school or college or university, but in no event beyond [his] attainment of age twenty-three; provided further, the age eighteen maximum shall be extended for any child who has been found totally incapacitated by a court of competent jurisdiction for as long as such incapacity exists. Upon a child ceasing to be a dependent child, his **or her** allowance shall terminate, and there shall be a redetermination of the amounts payable to any remaining dependent children.

[4.] **5.** In the event **all of** the allowances provided for in this section, payable on account of the death of a member, terminate before there has been paid an aggregate amount equal to [his] **the** accumulated contributions standing to [his] **the deceased member's** credit in the member's deposit fund at the time of [his] death, the difference between such accumulated contributions and such aggregate amount of allowance payments shall be paid to such person as [he] **the member** shall have nominated by written designation duly executed and filed with the board. If there be no such designated person surviving at termination, such difference shall be paid to the member's estate **or to the estate of the last beneficiary to whom benefits were paid.**

[5. For the purpose of computing the amount of the allowance payable under this section and for the purpose of determining eligibility pursuant to subsection 1 of this section, credited service shall be given for the period from the date of the member's death to the date he would have attained age sixty, if the board finds that the death was the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty as an employee.]

70.675. 1. Should a member with five or more years of credited service cease to be a member, except by death or retirement, before attaining an age which is within five years of his or her minimum service retirement age, the member shall be entitled to a deferred allowance provided for in this section; provided, if the [retirant] **former member** withdraws [the member's] **his or her** accumulated contributions from the members deposit fund, for purposes of this section there shall be eliminated from credited service any membership service or prior service for which the member was required to make member contributions provided for in subsection 2 of section 70.705. Such deferred allowance shall commence as of the first day of the calendar month next following the later of:

(1) The member's attainment of an age which is within five years of his or her minimum service retirement age; or

(2) The date the member's written application therefor is received by the board, in accordance with the provisions of subsection 2 of this section. The member shall have the right

to elect an option provided for in section 70.660 at the time of filing such written application.

2. Except as provided in subsection 5 of this section, a former member otherwise entitled to a deferred allowance shall be entitled to a deferred allowance only if the former member lives to an age which is within five years of his or her minimum service retirement age and if written application therefor is received by the board from the former member not earlier than ninety days before his or her attainment of such age. If such former member does not live to retirement or in the event the former member becomes employed in a position covered by the system before becoming a retirant or in the event such written application is not received by the board within the time limits specified, no benefits whatsoever shall be paid pursuant to the provisions of this section, except as provided in subsection 5 of this section.

3. A former member otherwise entitled to a deferred allowance shall be considered a member only for the purposes of subsection 4 of section 70.725.

4. If the deferred allowance commences prior to the date the former member reaches his or her minimum service retirement age, the allowance shall be a certain percent of the allowance otherwise provided for in this section. Such percent shall be one hundred percent reduced by one-half of one percent multiplied by the number of months by which the former member's age at the date the allowance commences is younger than the former member's minimum service retirement age.

5. If a former member who: (1) is entitled to a deferred allowance pursuant to this section; and (2) does not receive a lump sum payment as provided in section 70.676, dies before his or her date of retirement, the applicable benefits, if any, provided in this subsection shall be paid. The former member's surviving spouse, if any, [with whom the former member was living and] to whom the former member was married for not less than two years immediately preceding the date of the former member's death shall receive an allowance computed in the same manner in all respects as if such former member had:

(1) Survived to the first day of the calendar month next following the day the former member would have attained his or her minimum service retirement age or if later, the first day of the calendar month next following the date of the former member's death;

(2) Retired on such day with an allowance for life based on his or her credited service and final average salary at the time of termination of membership;

(3) Elected option A provided for in section 70.660;

(4) Nominated such spouse as joint beneficiary under such option; and

(5) Died on such day after electing such option A.

The allowance payable to the surviving spouse shall commence as of the first day of the calendar month next following the day the former member would have attained his or her minimum service retirement age or, if later, the first day of the calendar month next following the date of the former member's death. [If such spouse had not attained age forty at the time of the former member's

death, such spouse allowance shall commence on the date specified in this subsection and shall be payable for the remaining life of such spouse, but in no event for more than one hundred twenty months.] This subsection shall apply to any person who is a former member on or after August 28, 1998.

70.680. 1. Any member in service with five or more years of credited service who has not attained the age and service requirements of section 70.645 and who becomes totally and permanently physically or mentally incapacitated for his duty as an employee, as the result of a personal injury or disease, may be retired by the board upon written application filed with the board by or on behalf of the member; provided, that after a medical examination of such member made by or under the direction of a medical committee consisting of three physicians, one of whom shall be selected by the board, one by or on behalf of such member, and the third by the first two physicians so named, the medical committee reports to the board, by majority opinion in writing, that such member is physically or mentally totally incapacitated for the further performance of duty, that such incapacity will probably be permanent and that such member should be retired.

2. Upon disability retirement, as provided in subsection 1 of this section, a member shall receive an allowance for life provided for in section 70.655 and shall have the right to elect an option provided for in section 70.660. His **or her** disability retirement and allowance shall be subject to the provisions of [subsections 5 and 6] **subsection 5** of this section and to the provisions of section 70.685.

3. Any member in service who becomes totally and permanently physically or mentally incapacitated for his duty as an employee, as the natural and proximate result of a personal injury or disease which the board finds to have arisen out of and in the course of his actual performance of duty as an employee, may be retired by the board upon written application filed with the board by or on behalf of the member; provided, that after a medical examination of such member made by or under the direction of a medical committee consisting of three physicians, one of whom shall be selected by the board, one by or on behalf of such member, and the third by the first two physicians so named, the medical committee reports to the board, by majority opinion in writing, that such member is physically or mentally totally incapacitated for the further performance of duty, that such incapacity will probably be permanent, and that such member should be retired.

4. Upon disability retirement as provided in subsection 3 of this section, a member shall receive an allowance for life provided for in section 70.655; provided, that for the sole purpose of computing the amount of such allowance, he **or she** shall be given credited service for the period from the date of his **or her** disability retirement to the date he **or she** would attain age sixty. He **or she** shall have the right to elect an option provided for in section 70.660. His **or her** disability retirement and allowance shall be subject to the provisions of [subsections 5 and 6] **subsection 5** of this section and to the provisions of section 70.685.

5. At least once each year during the first five years following a member's retirement on

account of disability, and at least once in each three-year period thereafter, the board shall require any disability retirant who has not attained his minimum service retirement age to undergo a medical examination to be made by a physician designated by the board. If the retirant refuses to submit to medical examination in any such period, his disability allowance shall be suspended by the board until his withdrawal of such refusal. If such refusal continues for one year, all his rights in and to a disability allowance shall be revoked by the board. If, upon medical examination of the retirant, the physician reports to the board that the retirant is physically and mentally able and capable of resuming his duty as an employee in the position held by him at the time of his disability retirement, then the board shall, if demanded by the retirant, arrange a further medical examination of such member made by or under the direction of a medical committee consisting of three physicians, one of whom shall be selected by the board, one by or on behalf of the member, and the third by the first two physicians named. Should the medical committee concur, by majority opinion in writing to the board, the disability retirant is capable of resumption of duty, his disability retirement shall terminate and he shall be returned to duty and he shall immediately again become a member of the system, his credited service at the time of disability retirement shall be restored to his credit, and the amount of his accumulated contributions at the time of his disability retirement shall be restored to his credit in the members deposit fund. If he was in receipt of a duty disability allowance provided for in subsection 3 of this section, he shall also be given service credit for the period he was in receipt of the duty disability allowance.

[6. Should a disability retirant who has not attained his minimum service retirement age receive remuneration for his personal services rendered in any gainful occupation, then in no event shall the amount of his disability allowance exceed the difference between his final average salary and the total of the following amounts:

- (1) Such remuneration; and
- (2) The benefit, if any, payable from the federal Social Security Old Age, Survivors, and Disability Insurance Program on account of his disability.]

70.685. **1.** If [a death allowance is payable under the provisions of section 70.661, or if] a disability allowance is payable under the provisions of section 70.680, and if the [beneficiary or] retirant is also receiving workers' compensation **benefits** under any workers' compensation or similar law on account of the same [death or] disability, **or if the retirant is receiving remuneration for his or her personal services rendered in any gainful occupation or employment**, then in no event shall the amount of the system allowance payable until the member would have attained his minimum service retirement age exceed the difference between the member's final [average] **monthly** salary and the total of the following amounts:

- (1) The **monthly** workers' compensation **benefit, if any**; and
- (2) The **monthly** benefit, if any, payable from the federal social security old age, survivors, and disability insurance program on account of the same [death or] disability; and

(3) The portion of any **monthly** remuneration received by [such beneficiary] **the retirant for personal services rendered in any gainful occupation or employment** which is more than the amount of such **monthly** remuneration being received [by such person] at the time of the member's separation from service [or that portion received by such retirant for personal services rendered by him in any gainful occupation].

2. For purposes of this section, the member's final monthly salary shall mean the monthly average of compensation paid to the member during the most recent calendar year preceding the member's separation from service.

3. For purposes of this section, the "monthly remuneration being received at the time of the member's separation from service" shall mean one-twelfth of the member's remuneration for personal services rendered in any gainful occupation or employment not covered by the system during the most recent calendar year preceding the member's separation from service.

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