

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 761

89TH GENERAL ASSEMBLY

1998

L3307.03T

AN ACT

To repeal sections 169.322 and 169.350, RSMo 1994, and sections 169.270, 169.291, 169.324, 169.326, 169.328 and 169.597, RSMo Supp. 1997, relating to certain school retirement systems, and to enact in lieu thereof eight new sections relating to the same subject.

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

Section A. Sections 169.322 and 169.350, RSMo 1994, and sections 169.270, 169.291, 169.324, 169.326, 169.328 and 169.597, RSMo Supp. 1997, are repealed and eight new sections enacted in lieu thereof, to be known as sections 169.270, 169.291, 169.322, 169.324, 169.326, 169.328, 169.350 and 169.597, to read as follows:

169.270. Unless a different meaning is clearly required by the context, the following words and phrases as used in sections 169.270 to 169.400 shall have the following meanings:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member or paid on behalf of the member by the employer and credited to the member's individual account together with interest thereon in the employees contribution fund. The board of trustees shall determine the rate of interest allowed thereon as provided for in section 169.295;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of formulas and/or tables which have been approved by the board of trustees;

(3) "Average final compensation", the highest average annual compensation received for any four consecutive years of service. In determining whether years of service are "consecutive", only periods for which creditable service is earned shall be considered, and all other periods shall be disregarded;

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

(4) "Beneficiary", any person designated by a member for a retirement allowance or other benefit as provided by sections 169.270 to 169.400;

(5) "Board of education", the board of directors or corresponding board, by whatever name, having charge of the public schools of the school district in which the retirement system is established;

(6) "Board of trustees", the board provided for in section 169.291 to administer the retirement system;

(7) "Break in service", an occurrence when a regular employee ceases to be a regular employee for any reason (including termination of employment, resignation, retirement or furlough but not including vacation, sick leave, excused absence or leave of absence granted by an employer) and such person does not again become a regular employee until after fifteen consecutive school or work days have elapsed. A "school or work day" is a day on which the employee's employer requires (or if the position no longer exists, would require, based on past practice) employees having the former employee's last job description to report to their place of employment for any reason;

(8) "Compensation", the regular compensation as shown on the salary and wage schedules of the employer plus any amounts paid by the employer on a member's behalf pursuant to subdivision (5) of subsection 1 of section 169.350, but such term is not to include extra pay, overtime pay, consideration for entering into early retirement, or any other payments not included on salary and wage schedules. For any year beginning after December 31, 1988, the annual compensation of each member taken into account under the retirement system shall not exceed the limitation set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended;

(9) "Creditable service", the amount of time that a regular employee is a member of the retirement system and makes contributions thereto in accordance with the provisions of sections 169.270 to 169.400;

(10) "Employer", the school district, the library district, or the retirement system established by section 169.280, or any combination thereof, as required by the context to identify the common law employer of any member, or, for purposes only of subsection 2 of section 169.324, of any retiree;

(11) "Employer's board", the board of education, the board of trustees of the library district, the board of trustees, or any combination thereof, as required by the context to identify the governing body of an employer;

(12) "Library district", any urban public library district created from or within a school district under the provisions of section 182.703, RSMo;

(13) "Medical board", the board of physicians provided for in section 169.291;

(14) "Member", any person who is a regular employee after the retirement system has been established hereunder ("active member"), and any person who (i) was an active member, (ii) has

vested retirement benefits hereunder, and (iii) is not receiving a retirement allowance hereunder ("inactive member");

(15) "Minimum normal retirement age", the earlier of the member attaining the age of sixty or has a total of at least [eighty] **seventy-five** credits, with each year of creditable service, and prorated for fractional years, equal to one credit and each year of age, and prorated for fractional years, equal to one credit;

(16) "Prior service", service prior to the date the system becomes operative which is creditable in accordance with the provisions of section 169.311. Prior service in excess of thirty-eight years shall be considered thirty-eight years;

(17) "Regular employee", any person employed by the school district, the library district, or the retirement system who is assigned to an established position which requires a service of not less than five hours per day, five days per week, and not less than nine calendar months a year. Any regular employee who is subsequently assigned without break in service to a position demanding less service than is required of a regular employee shall continue the employee's status as a regular employee. However, a temporary, part-time or furloughed employee is not a regular employee;

(18) "Retirant", a former member receiving a retirement allowance hereunder;

(19) "Retirement allowance", annuity payments to a retirant or to such beneficiary as is entitled to same;

(20) "School district", any school district in which a retirement system shall be established under section 169.280.

169.291. 1. The general administration and the responsibility for the proper operation of the retirement system are hereby vested in a board of trustees of twelve persons who shall be resident taxpayers of the school district, as follows:

(1) Four trustees to be appointed for terms of four years by the board of education; provided, however, that the terms of office of the first four trustees so appointed shall begin immediately upon their appointment and shall expire one, two, three and four years from the date the retirement system becomes operative, respectively;

(2) Four trustees to be elected for terms of four years by and from the members of the retirement system; provided, however, that the terms of office of the first four trustees so elected shall begin immediately upon their election and shall expire one, two, three and four years from the date the retirement system becomes operative, respectively;

(3) The ninth trustee shall be the superintendent of schools of the school district;

(4) The tenth trustee shall be one retirant of the retirement system elected for a term of four years beginning the first day of January immediately following August 13, 1986, by the retirants of the retirement system;

(5) The eleventh trustee shall be appointed for a term of four years beginning the first day

of January immediately following August 13, 1990, by the board of trustees described in subdivision (3) of section 182.701, RSMo;

(6) The twelfth trustee shall be a retirant of the retirement system elected for a term of four years beginning the first day of January immediately following August 28, 1992, by the retirants of the retirement system.

2. If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled, except that the board of trustees may appoint a qualified person to fill the vacancy in the office of an elected member until the next regular election at which time a member shall be elected for the unexpired term.

3. Each trustee shall, before assuming the duties of a trustee, take the oath of office before the court of the judicial circuit or one of the courts of the judicial circuit in which the school district is located that so far as it devolves upon the trustee, such trustee shall diligently and honestly administer the affairs of the board of trustees and that the trustee will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the trustee making it and filed in the office of the clerk of the circuit court.

4. Each trustee shall be entitled to one vote in the board of trustees. Seven trustees shall constitute a quorum at any meeting of the board of trustees. At any meeting of the board of trustees where a quorum is present, the vote of at least seven of the trustees in support of a motion, resolution or other matter is necessary to be the decision of the board.

5. The board of trustees shall have exclusive original jurisdiction in all matters relating to or affecting the funds herein provided for, including, in addition to all other matters, all claims for benefits or refunds, and its action, decision or determination in any matter shall be reviewable in accordance with chapter 536, RSMo, or chapter 621, RSMo. Subject to the limitations of sections 169.270 to 169.400, the board of trustees shall, from time to time, establish rules and regulations for the administration of funds of the retirement system, for the transaction of its business, and for the limitation of the time within which claims may be filed.

6. The trustees shall serve without compensation. The board of trustees shall elect from its membership a chairman and a vice chairman. The board of trustees shall appoint an executive director who shall serve as the administrative officer of the retirement system and as secretary to the board of trustees. It shall employ one or more persons, firms or corporations experienced in the investment of moneys to serve as investment counsel to the board of trustees. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board of trustees shall approve, and shall be paid from the investment income.

7. The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuations of the various funds of the retirement system and for checking the experience

of the system.

8. The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall prepare annually and furnish to the board of education and to each member of the retirement system who so requests a report showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

9. The board of trustees shall have, in its own name, power to sue and to be sued, to enter into contracts, to own property, real and personal, and to convey the same; but the members of such board of trustees shall not be personally liable for obligations or liabilities of the board of trustees or of the retirement system.

10. The board of trustees shall arrange for necessary legal advice for the operation of the retirement system.

11. The board of trustees shall designate a medical board to be composed of three physicians who shall not be eligible for membership in the system and who shall pass upon all medical examinations required under the provisions of sections 169.270 to 169.400, shall investigate all essential statements and certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it.

12. The board of trustees shall designate an actuary who shall be the technical advisor of the board of trustees on matters regarding the operation of the retirement system and shall perform such other duties as are required in connection therewith. Such person shall be qualified as an actuary by membership as a Fellow of the Society of Actuaries or by similar objective standards.

13. At least once in each five-year period the actuary shall make an investigation into the actuarial experience of the members, retirants and beneficiaries of the retirement system and, taking into account the results of such investigation, the board of trustees shall adopt for the retirement system such actuarial assumptions as the board of trustees deems necessary for the financial soundness of the retirement system.

14. On the basis of such actuarial assumptions as the board of trustees adopts, the actuary shall make annual valuations of the assets and liabilities of the funds of the retirement system.

15. The rate of contribution payable by the employer shall equal one and ninety-nine one-hundredths percent, effective July 1, 1993; three and ninety-nine one-hundredths percent, effective July 1, 1995; five and ninety-nine one-hundredths percent, effective July 1, 1996; **seven and one-half percent effective January 1, 1999, and for all subsequent years.**

169.322. 1. Upon the written application of an active member or of the person's employer's board, any active member who has five or more years of creditable service shall be retired by the

board of trustees on a disability retirement allowance, if the medical board after a medical examination of such member shall certify that such member is mentally or physically unable to perform such member's employment duties and that such incapacity is likely to be permanent. **Application for a disability retirement allowance may be made after the member ceases to be an active member, provided that the disability commenced while the member was an active member, and further provided that application is made no later than six months after the disabled member ceases to be an employee of the employer.** The first monthly payment of such disability retirement allowance shall not be made to such member so long as the member receives compensation from the member's employer.

2. Upon retirement for disability, a member shall receive a disability retirement allowance which shall be determined in the same manner as the service retirement allowance as set forth in section 169.324[; provided, the minimum disability retirement allowance shall be twenty-five percent of the person's average final compensation. The optional allowances provided in section 169.326 shall not be available to a member eligible for disability retirement allowance.], **but not less than the minimum disability retirement allowance provided in this section. The minimum disability retirement allowance shall be the lesser of:**

- (1) Twenty-five percent of the person's average final compensation; or**
- (2) The member's service retirement allowance calculated based on the member's final average compensation and the maximum number of years of creditable service the member would have earned had the member remained an employee until attaining the age of sixty.**

3. Once each year during the first five years following a member's retirement on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require any disability retirant who has not yet attained minimum normal retirement age to undergo a medical examination at a place designated by the medical board, such examination to be made by the medical board or by a physician or physicians designated by such board. Should any such disability retirant refuse to submit to such medical examination, the person's disability allowance may be discontinued until the person's withdrawal of such refusal, and should the person's refusal continue for one year all rights in and to the person's disability allowance shall be revoked by the board of trustees.

4. Should the board of trustees determine that any disability retirant **who has not yet attained minimum normal retirement age** is engaged in or is able to engage in a gainful occupation paying more than the difference between the person's monthly disability retirement allowance plus any social security benefits to which the person is eligible and the current rate of monthly compensation for the position the person held at retirement, then the amount of the person's disability retirement allowance shall be reduced to an amount which together with social security benefits and the amount earnable by the person shall equal such current rate of monthly

compensation. Should the person's earning capacity be later changed, the amount of the person's disability retirement allowance may be further modified. The board of trustees may engage those persons, firms or corporations which it deems necessary to assist the board of trustees in making any determination under this subsection.

5. Should any member retired for disability be restored to active service as a regular employee, the member's disability retirement allowance shall cease and the member shall again become a member of the retirement system, and contribute thereunder. Anything in sections 169.270 to 169.400 to the contrary notwithstanding, a disability retirant who has not attained the minimum normal retirement age at the date of again becoming a member shall have the person's creditable service at the time of the person's disability retirement restored, and the excess of the person's accumulated contributions at time of retirement over the total payments which the person received during retirement shall be credited to the person's account. Upon subsequent retirement, the person shall be entitled to a service retirement allowance to the extent the person meets the requisite qualifications, and the person's prior disability retirement allowance shall not be resumed. If a disability retirant has attained the minimum normal retirement age at the date of again becoming a member, the disability retirement allowance the person was receiving immediately prior to restoration of membership shall be resumed on subsequent retirement, together with such retirement allowances as shall accrue by reason of the person's latest period of membership. For the sole purpose of determining the person's eligibility for such additional retirement allowance, but not for determining the amount, all of the person's years of creditable service, whether before or after the person's period of disability, for which the person has made contributions which have not been withdrawn, shall be considered.

169.324. 1. The annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life shall be the retirant's number of years of creditable service multiplied by one and three-fourths percent of the person's average final compensation, subject to a maximum of sixty percent of the person's average final compensation. **For any member retiring on or after June 30, 1999, the annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life shall be the retirant's number of years of creditable service multiplied by two percent of the person's average final compensation, subject to a maximum of sixty percent of the person's average final compensation.** Any member whose number of years of creditable service is greater than thirty-four and one-quarter on August 28, 1993, that provides for the foregoing formula for determining the annual service retirement allowance shall receive an annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life equal to the retirant's number of years of creditable service as of August 28, 1993, multiplied by one and three-fourths percent of the person's average final compensation but shall not receive a greater annual service retirement allowance based on additional years of creditable service after August

28, 1993, that provides for the foregoing formula for determining the annual service retirement allowance. Provided, however, that, effective January 1, 1996, any retiree who retired on, before or after January 1, 1996, with at least twenty years of creditable service shall receive at least three hundred dollars each month as a retirement allowance, or the actuarial equivalent thereof if the retiree elected any of the options available under section 169.326. Provided, further, any retiree who retired with at least ten years of creditable service shall receive at least one hundred fifty dollars each month as a retirement allowance, plus fifteen dollars for each additional full year of creditable service greater than ten years but less than twenty years (or the actuarial equivalent thereof if the retiree elected any of the options available under section 169.326). Any beneficiary of a deceased retiree who retired with at least ten years of creditable service and elected one of the options available under section 169.326 shall also be entitled to the actuarial equivalent of the minimum benefit provided by this subsection, determined from the option chosen.

2. Except as otherwise provided in sections 169.580 and 169.585, a retirant may not receive a retirement allowance payment in any month for which such person receives remuneration from the person's employer for the performance of services except such person may serve as a nonregular substitute, part-time or temporary employee for not to exceed five hundred thirty hours in any school year without becoming a member and without having the person's retirement allowance discontinued.

3. The board of trustees shall determine annually whether the investment return on funds of the system can provide for an increase in benefits for [those retirants who, as of the date of any such increase, are at least age sixty-five and have been retired at least fourteen months.] **retirants eligible for such increase. A retirant will be eligible for an increase awarded pursuant to this section as of the fourth January following the date the retirant commenced receiving retirement benefits.** Any such increase shall also apply to any monthly joint and survivor retirement allowance payable to such retirant's beneficiaries, regardless of age. The board shall make such determination as follows:

(1) After determination by the actuary of the investment return for the preceding year as of December thirty-first (the "valuation year"), the actuary shall recommend to the board of trustees what portion of the investment return is available to provide such benefits increase, if any, and shall recommend the amount of such benefits increase, if any, to be implemented as of the first day of the thirteenth month following the end of the valuation year, and the first payable on or about the first day of the fourteenth month following the end of the valuation year. The actuary shall make such recommendations so as not to affect the financial soundness of the retirement system, recognizing the following safeguards:

(a) The retirement system's funded ratio as of January first of the year preceding the year of a proposed increase shall be at least one hundred percent after adjusting for the effect of the proposed increase. The funded ratio is the ratio of assets to the pension benefit obligation;

(b) The actuarially required contribution rate, after adjusting for the effect of the proposed increase, may not exceed the statutory contribution rate;

(c) The actuary shall certify to the board of trustees that the proposed increase will not impair the actuarial soundness of the retirement system;

(d) A benefit increase, under this section, once awarded, cannot be reduced in succeeding years;

(2) The board of trustees shall review the actuary's recommendation and report and shall, in their discretion, determine if any increase is prudent and, if so, shall determine the amount of increase to be awarded.

4. This section does not guarantee an annual increase to any retirant.

5. Notwithstanding anything contained in this section to the contrary, the amount of the annual service retirement allowance payable to any retirant pursuant to the provisions of sections 169.270 to 169.400, including any adjustments made pursuant to subsection 3 of this section, shall at all times comply with the provisions and limitations of section 415 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, the terms of which are specifically incorporated herein by reference.

6. All retirement systems established by the laws of the state of Missouri shall develop a procurement action plan for utilization of minority and women money managers, brokers and investment counselors. Such retirement systems shall report their progress annually to the joint committee on public employee retirement and the governor's minority advocacy commission.

169.326. 1. Until the first payment on account of any benefit becomes due, any retirant may elect, by delivering written notice duly acknowledged to the board of trustees, to receive the actuarial equivalent of the person's annual service retirement allowance **or disability retirement allowance** in the form of one of the options set forth below. No optional selection shall become effective in case a retirant dies within thirty days after retirement or within thirty days after filing such election; in such event the retirant shall be considered as an active member at the time of the retirant's death.

Option 1. Upon the person's death, the person's retirement allowance shall be continued throughout the life of and paid to such person as the person shall nominate by written designation duly acknowledged and delivered to the board of trustees at or prior to the time of the person's retirement, provided that in the event the person's designated beneficiary predeceases the person, then the person's retirement allowance shall be adjusted at that time to the amount determined pursuant to subsection 1 of section 169.324 at the time of the retirement of the person, or

Option 2. Upon the person's death, one-half of the person's retirement allowance shall be continued throughout the life of and paid to such person as the person shall nominate by written designation duly acknowledged and filed with the board of trustees at or prior to the time of the person's retirement, provided that in the event the person's designated beneficiary predeceases

the person, then the person's retirement allowance shall be adjusted at that time to the amount determined under subsection 1 of section 169.324 at the time of the person's retirement, or

Option 3. Upon the person's death, no benefits shall be paid to any beneficiary or estate of the retired member. This optional benefit is actuarially increased over the benefit formula providing for benefits at death.

2. If the death of any member who has not elected an option occurs before the person has received total benefits at least as large as accumulated contributions at retirement, the difference shall be paid in one lump sum to the person's designated beneficiary, if living, otherwise to the estate of the retired member.

3. If an active member dies, or if an inactive member dies before retirement but after becoming eligible to retire and commence receiving retirement benefits, and a dependent of the member (spouse, dependent child under age nineteen or dependent parent) is designated as primary beneficiary to receive the member's accumulated contributions, the beneficiary may, in lieu thereof, at the beneficiary's option, request that the benefit be paid under option 1 in subsection 1 of this section as if the member had retired as of the date of death and designated such beneficiary as the option 1 beneficiary; except that if the beneficiary is a dependent child, the option 1 benefit shall be payable only until the child attains age nineteen and not throughout the life of such child. If the designated beneficiary elects the option 1 benefit and if the member was an active member at the time of death, such benefit shall be calculated as if the deceased member had, at the time of death, at least ten years' creditable service. If more than one dependent is designated as beneficiary, the benefit shall be shared equally as determined by the actuary. The determination of the board of trustees as to whether a person is a dependent for the purpose of this subsection shall be final.

4. Notwithstanding anything contained in sections 169.270 to 169.400 to the contrary, the payment of the annual service retirement allowance, or the actuarial equivalent of the annual service retirement allowance payable under any option prescribed in this section, shall at all times comply with the distribution rules of section 401(a)(9) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, the terms of which are specifically incorporated herein by reference.

5. No person who would otherwise qualify as a dependent or beneficiary shall be eligible for, or entitled to, any benefits when such person is the principal or an accomplice in willfully bringing about the death of a member, retirant, or another dependent or beneficiary whose death would otherwise have resulted in payment of a benefit or a benefit increase to such person. The determination of the board of trustees that such person willfully brought about such death shall be made from a preponderance of the evidence presented and shall not be controlled by any contrary finding by any other forum, whether considered under the same or another degree of proof.

6. Any retirant or dependent or beneficiary who is entitled to or receiving benefits from the retirement system may, on a form prescribed by the board of trustees and filed with the board, irrevocably waive all or any portion of his or her retirement allowance or survivor benefit or any other benefit payable hereunder. Such waiver shall apply only to benefits that are payable on or after the date the waiver is filed. If a retirant files an irrevocable waiver in accordance with this subsection, the waiver shall apply only with respect to the retirant and shall not affect the rights of any dependents or other beneficiaries upon the retirant's death. If a dependent or beneficiary files an irrevocable waiver in accordance with this subsection, any benefits payable hereunder as a result of the death of a member or retirant shall be paid as if such dependent or beneficiary did not exist.

169.328. 1. Should a member cease to be a regular employee, except by retirement, the member, if living, shall be paid on demand, made by written notice to the board of trustees, the amount of the person's accumulated contributions (with interest as determined by the board of trustees as provided in sections 169.270 to 169.400) standing to the credit of the person's individual account in the employees contribution fund. The accumulated contributions with interest shall not be paid to a member so long as the person remains a regular employee. If the member dies before retirement such accumulated contributions (with interest) shall be paid to the member's estate or designated beneficiary unless the provisions of subsection 3 of section 169.326 apply.

2. If a former unvested member's accumulated contributions have not been withdrawn four years after the person has ceased to be a member (other than by reason of death or retirement), the board of trustees shall pay the same to such former member within a reasonable time after the expiration of such four-year period.

3. If, on account of undeliverability, improper mailing or forwarding address, or other similar problem, the board of trustees is unable to refund the accumulated contributions of a former **unvested** member or to commence payment of retirement benefits within four years after the end of the calendar year in which such former member ceased to be a regular employee, the board may transfer the accumulated contributions to the general reserve fund. If, thereafter, written application is made to the board of trustees for such refund or benefits, the board shall cause the same to be paid from the general reserve fund, but no interest shall be accrued after the end of the fourth year following the end of the calendar year in which such former member ceased to be a regular employee.

4. In its discretion the board of trustees may approve extensions of any time periods in this section on account of a former member's military or naval service, academic study or illness.

169.350. 1. All of the assets of the retirement system (other than tangible real or personal property owned by the retirement system for use in carrying out its duties, such as office supplies and furniture) shall be credited, according to the purpose for which they are held, in either the

employees contribution fund or the general reserve fund.

(1) The employees contribution fund shall be the fund in which shall be accumulated the contributions of the members. The employer shall, except as provided in subdivision (5) of this subsection, cause to be deducted from the compensation of each member on each and every payroll, for each and every payroll period, the pro rata portion of five and nine-tenths percent of his annualized compensation. [Any changes in the percentage of annualized compensation to be deducted shall be effective for each member's first full payroll period after the effective date of the legislation which provides for such change.] **Effective January 1, 1999, the employer shall deduct an additional one and six-tenths percent of the member's annualized compensation.**

(2) The employer shall pay all such deductions and any amount it may elect to pay pursuant to subdivision (5) of this subsection to the retirement system at once. The retirement system shall credit such deductions and such amounts to the individual account of each member from whose compensation the deduction was made or with respect to whose compensation the amount was paid pursuant to subdivision (5) of this subsection. In determining the deduction for a member in any payroll period, the board of trustees may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such period.

(3) The deductions provided for herein are declared to be a part of the compensation of the member and the making of such deductions shall constitute payments by the member out of the person's compensation and such deductions shall be made notwithstanding that the amount actually paid to the member after such deductions is less than the minimum compensation provided by law for any member. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for the person's full compensation, and the making of the deduction and the payment of compensation less the deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by sections 169.270 to 169.400.

(4) The accumulated contributions with interest of a member withdrawn by the person or paid to the person's estate or designated beneficiary in the event of the person's death before retirement shall be paid from the employees contribution fund. Upon retirement of a member the member's accumulated contributions with interest shall be transferred from the employees contribution fund to the general reserve fund.

(5) The employer may elect to pay on behalf of all members all or part of the amount that the members would otherwise be required to contribute to the employees contribution fund pursuant to subdivision (1) of this subsection. Such amounts paid by the employer shall be in lieu of members' contributions and shall be treated for all purposes of sections 169.270 to 169.400 as contributions made by members. Notwithstanding any other provision of this chapter to the

contrary, no member shall be entitled to receive such amounts directly. The election shall be made by a duly adopted resolution of the employer's board and shall remain in effect for at least one year from the effective date thereof. The election may be thereafter terminated only by an affirmative act of the employer's board notwithstanding any limitation in the term thereof in the adopting resolution. Any such termination resolution shall be adopted at least sixty days prior to the effective date thereof, and the effective date thereof shall coincide with a fiscal year-end of the employer. In the absence of such a termination resolution, the election shall remain in effect from fiscal year to fiscal year.

2. The general reserve fund shall be the fund in which shall be accumulated all reserves for the payment of all benefit expenses and other demands whatsoever upon the retirement system except those items heretofore allocated to the employees contribution fund.

(1) All contributions by the employer, except those the employer elects to make on behalf of the members pursuant to subdivision (5) of subsection 1 of this section, shall be credited to the general reserve fund.

(2) Should a retirant be restored to active service and again become a member of the retirement system, the excess, if any, of the person's accumulated contributions over benefits received by the retirant shall be transferred from the general reserve fund to the employees contribution fund and credited to the person's account.

3. Gifts, devises, bequests and legacies may be accepted by the board of trustees and deposited in the general reserve fund to be held, invested and used at its discretion for the benefit of the retirement system except where specific direction for the use of a gift is made by a donor.

169.597. Notwithstanding any provision of this chapter to the contrary, the board of trustees of any retirement system or the governing body of any political subdivision which funds such retirement system shall have standing to seek a declaratory judgment concerning the application of article X, section 21 of the Missouri Constitution to the provisions of this [act] **chapter**. In the event a final judgment is rendered by a court which judgment determines that any provision of this [act] **chapter** constitutes a new activity or service or increase in the level of an activity or service beyond that required by existing law pursuant to article X, section 21 of the Missouri Constitution, or any successor to that section, that provision of this [act] **chapter** shall be void ab initio and any new benefit or feature required by such provision of this [act] **chapter** shall be deemed not to have accrued and shall not be payable to members.