

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits

Chapter 27. Retirement of Personnel; Federal Benefits

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TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / Annotations

HISTORY

Prior law. Ordinance Mun. C. St. C. app. Dec. 24, 1943 (Bill no. 36), eff. Jan. 1, 1944, as amended by Ords. Jan. 15, 1946 (Bill no. 69); June 5, 1946 (Bill no. 26); Sept. 23, 1947 (Bill no. 58); Aug. 9, 1948 (Bill no. 42); Oct. 10, 1948 (Bill no. 47); Sept. 12, 1949 (Bill no. 38); Mar. 8, 1950 (Bill no. 12); Oct. 24, 1951 (Bill no. 62); Jan. 5, 1955 (Bill no. 201).

Ordinance Mun. C. St. T. and St. J. app. July 18, 1947 (Bill no. 14), eff. Oct. 1, 1947, as amended by Ords. Jan. 27, 1948 (Bill no. 130); July 30, 1948 (Bill no. 248); Oct. 23, 1948 (Bill no. 301); Aug. 18, 1951 (Bill no. 5); Mar. 30, 1954 (Bill no. 336).

FEDERAL SOCIAL SECURITY BENEFITS

Act. Leg. Assem. approved Nov. 30, 1951 (Bill No. 10), as amended by Acts June 4, 1959, No. 432, §§ 1, 2, Sess. L. 1959, p. 46; Oct. 5, 1959, No. 502, § 1, Sess. L. 1959, p. 190, provided:

“Section 1. (a) That the Government of the Virgin Islands in behalf all its officers and employees, and all of the officers and employees of all political subdivisions of the Virgin Islands, hereby accepts the benefits of the provisions of the Federal Social Security Act, 53 Stat. 1360, as amended, for Old-Age and Survivors Insurance Benefits whenever the provisions of such Act are extended to embrace such officers and employees.

“(b) The term “political subdivisions” includes an instrumentality of the Virgin Islands, or of one or more political subdivisions of the Virgin Islands, or of the Virgin Islands and one or more of its political subdivisions.

“Section 2. Any and all officials, boards, commissions, directors and authorities having charge and preparation of payrolls and payments of salaries and wages to officers and employees of the Government of the Virgin Islands, or any of its political subdivisions as set forth in Section 1(b) are hereby authorized and directed to make payroll and salary and wage deductions and to handle and dispose of the same as required by the Federal Social Security Act, as amended to include such officers and employees within the eligible group, and any official or board being authorized to disburse funds for the salary or wages of any officer or employee who shall come within such eligible group is authorized to pay and disburse out of any funds available for operation and maintenance such sums, and dispose or handle the same in such manner as is required and necessary to make payments and benefits of said Federal Social Security Act available to such officers and employees who shall become eligible.

“Section 3. Nothing contained in this Act should deprive any person of benefit under an existing retirement system, nor repeal, amend, modify or supersede any law, charter, amendment or ordinance established or pertaining to existing retirement system.

“Section 4. That any agreement, or modification thereof, entered into by the government of the Virgin Islands to extend the provisions of the Social Security Act as provided in the above sections shall be effective after a date specified therein but in no event may it be effective prior to the retroactive effective date of coverage as provided in the Federal Act.”

ANNOTATIONS

1. Particular matters.

1. Particular matters.

The court, in an action alleging mismanagement of the Government Employees Retirement System, dismissed, for failure to state a claim, the retired employees' claims for: deprivation of property without due process, taking without just compensation, and violation of civil rights under 42 U.S.C. § 1983 because plaintiffs were largely unable to allege an actual present deprivation of protected rights since plaintiff's claims under Territorial law for breach of fiduciary duty, mismanagement, and waste presented factual and legal issues far exceeding the limited remaining federal claim; the court refused to exercise supplemental jurisdiction over the territorial claims. *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

Cited. Cited in *Joseph v. Government of V.I.*, 576 F. Supp. 1335, 1983 U.S. Dist. LEXIS 10638 (D.C.V.I. 1983).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 701. System created

§ 701. System created

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 701. System created / Text

(a) There shall be and is hereby created a retirement and benefit system for officials and employees of the Government of the United States Virgin Islands and for their dependents and

beneficiaries, for the payment of retirement annuities, disability annuities, and other benefits as provided herein to said officials and employees, and to their dependents and beneficiaries, after stated periods of service and upon fulfillment of certain conditions as hereinafter set forth.

(b) The purpose of such system is to encourage qualified personnel to enter and remain in the service of the Government of the United States Virgin Islands by establishing an orderly means whereby those who become superannuated or otherwise incapacitated as the result of age or disability, may be retired from service without prejudice and without inflicting a hardship upon the employees retired, and to enable such employees to accumulate reserves for themselves, their dependents and their beneficiaries, to provide for old age, death, disability and termination of employment, thus promoting economy and efficiency in the administration of government.

(c) The system created under this chapter shall have the powers and privileges of a corporation, subject, as provided herein, to the control of the Board of Trustees thereof, and shall be known and designated as the "Employees Retirement System of the Government of the Virgin Islands". By such name all its business shall be transacted, all of its money shall be invested, and all its cash and securities and other property shall be held. The debts, obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts, funds, facilities, and property of the system are those of the system and not those of the Government of the Virgin Islands or of any office, bureau, department, agency, commission, municipality, branch, agent, officer, or employee thereof.

(d) The system shall become operative as of October 1, 1959, at which time contributions by the employees and employer, pursuant to the provisions hereof, shall begin. Such date shall be known as the "date of establishment". Retirement, disability, death benefit and all other payments by the system shall begin to accrue from the date of establishment.

(e) All pensions and benefits granted prior to the date of establishment shall be paid according to the laws under which the same were granted. All claims for pensions and benefits which may be pending on the date of establishment, shall be granted in accordance with the provisions of the aforesaid legislation; Provided, however, That no person who, on the date this chapter becomes effective, is entitled to a pension or other benefit under the provisions of any other law, shall receive a lesser amount under this chapter than he would have received if he had been paid according to the provisions of said other law.

(f) Notwithstanding any other provision of law, the system is not required to pay any taxes or assessments on any of the property acquired or to be acquired by it, or on its operations or activities, or on the income derived from its investments or from any of its operations or activities.

(g) The Board shall provide the Legislature with an analysis of the assets and liability implications of each bill that would affect the investment strategy of the system, the funding of

the system, or the benefit structure of this system. The analysis shall include an explanation of the methodology employed and the assumptions used in its preparation. The Legislature shall provide the necessary funding for the analysis of the system for bills proposed by the Legislature.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 701. System created / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 93; amended Mar. 15, 1990, No. 5522, § 1(i), Sess. L. 1990, p. 34; Nov. 2, 2005, No. 6794, § 1 1., 2., Sess. L. 2005, p. 380.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 701. System created / Annotations

HISTORY

Revision note

—**1995.** Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsections (a) and (b) for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—**2005.** Act 6794, § 1, added the last sentence in subsection (c); and added subsections (f) and (g).

—**1990.** Subsection (c): Inserted “subject, as provided herein, to the control of the Board of Trustees thereof” following “corporation” in the first sentence and substituted “money” for “moneys” following “all of its” and made a minor change in punctuation in the second sentence.

Transfer of Retirement System function from Division of Personnel to Retirement Administration—1985. See note following section 5 of this title.

Repeal. Act June 24, 1959, No. 479, § 2, Sess. L. 1959, p. 93, repealed all laws, ordinances or parts thereof in conflict with the provisions of this chapter.

ANNOTATIONS

- 0.5. Intent.
 - 1. Assignment of benefits.
 - 2. Tax exemption.
 - 3. Tax liability.
 - 4. Application.

0.5. Intent.

Although nonparty movants were not explicitly mentioned in the original consent judgment, they had standing to seek enforcement of the judgment because under Virgin Islands law, the retirement system

was intended to benefit present and former government employees such as movants, and the Board of Trustees was required to act to benefit the system and, presumably, its members. *Employees Retirement Sys. v. Quinn*, 30 V.I. 157, 1994 U.S. Dist. LEXIS 8440 (D.C.V.I. 1994).

1. Assignment of benefits.

First section of law creating government employees retirement system, stating that the system was created for the employees and their dependents and beneficiaries for the payment of benefits to the employees and their dependents and beneficiaries and for the purpose of, among other things, enabling the employees to accumulate reserves for themselves and their dependents and beneficiaries to provide for old age, retirement, death and disability, evinces clear and indisputable intent to protect family and dependents of a pensioner as well as the pensioner, and legislature did not intend to exempt pension benefits from legal process to enforce or protect the rights of the pensioner's dependents or beneficiaries when if enacted, in the same pension law, a provision stating that the benefit rights and monies could not be assigned. *Government of V.I. ex rel. Hodge v. Hodge*, 14 V.I. 438, 1977 U.S. Dist. LEXIS 6028 (D.C.V.I. 1977).

2. Tax exemption.

Real property conveyed by a private individual to the Employees' Retirement System is exempt from the Virgin Islands stamp tax. 10 V.I.Op.A.G. 60.

3. Tax liability.

Retirement benefits are not exempt from tax levy. 10 V.I.Op.A.G. 110.

4. Application.

3 V.I.C. § 701 did not support the due process claim of a contract employee of the University of the Virgin Islands who claimed that she had a property interest in continued employment; at most, this section showed that the Virgin Islands Legislature had established a retirement system in which employees of the Government of the Virgin Islands could participate. *Davis v. Ragster*, 49 V.I. 932, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 39593 (May 14, 2008).

Cited. Cited in *Government of the Virgin Islands v. Benjamin*, 25 V.I. 191, 736 F. Supp. 1337, 1990 U.S. Dist. LEXIS 5957 (1993); *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994); *Villafane v. Bryan*, 43 V.I. 149, 2001 V.I. LEXIS 8 (Terr. Ct. St. C. 2001).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 702. Definitions

§ 702. Definitions

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 702. Definitions / Text

Words and phrases wherever used in this chapter, unless a different meaning is plainly expressed in the context or a different definition has been provided elsewhere in the chapter, shall have the following meanings—

(a) “System” shall mean the Employees Retirement System of the Government of the United States Virgin Islands.

(b) “Government” shall mean the Government of the United States Virgin Islands and its agencies and instrumentalities.

(c) “Employer” shall mean the Government of the United States Virgin Islands and its agencies and instrumentalities including all autonomous and semiautonomous agencies of the Government of the Virgin Islands.

(d) “Board” shall mean the Board of Trustees provided for herein to administer the system.

(e) “Employee” shall mean an official or employee in the service of the employer who is employed by the employer for compensation.

(f) “Member” shall mean any employee included in the membership of the system and participating therein as herein provided.

(g) “Service” shall mean employment as an employee of the employer for salary, wages or compensation.

(h) “Prior service” shall mean service as an employee of the employer prior to the date of establishment.

(i) “Membership service” shall mean service as an employee of the employer on and after the date of establishment while a member of the system.

(j) “Credited service” shall mean prior service and membership service as herein provided.

(k) “Regular interest” shall mean interest at such rate as shall be determined by the Board from the experience of the system which shall be not less than two percent nor more than four percent per annum. For the first five fiscal years of operations of the system regular interest shall be at the rate of three percent per annum.

(l) “Accumulated contributions” shall mean the amounts contributed by a member as a deduction from compensation, without interest.

(m) “Military service” shall mean service in any of the armed services of the United States.

(n) “Compensation” shall mean amounts received as pay, salary or remuneration for services rendered, provided that the maximum amount of compensation to be used for contributions by the members or in the computation of any annuity or benefit hereunder shall be

\$65,000. Overtime pay or compensation for special services shall not be included as compensation.

(o) “Average compensation” shall mean the average rates of annual compensation for any five highest years of credited service within the last ten years of service, subject to the maximum salary limitations in effect during such service.

(p) “In service” shall mean: (a) actual employment as an employee for partial or total compensation; (b) an employee in military service; or (c) an employee on leave of absence approved by the employer on account of sickness, disability or other cause provided such leave of absence shall not have extended continuously for more than one year prior to the date of establishment.

(q) “Retirement” shall mean the acceptance of a retirement annuity by a member upon withdrawal from service of the employer.

(r) “Withdrawal from service” shall mean complete severance of employment of any member as an employee of the employer, by resignation, discharge, dismissal or death.

(s) “Fiscal year” shall mean the period beginning on October 1 in any year and ending on September 30th of the subsequent year.

(t) The masculine pronoun, wherever used, shall include the feminine pronoun.

(u) “Policeman” means employees in the Division of Police and Prison of the U.S. Virgin Islands Police Department (V.I.P.D.) who perform traditional police duties or direct others in the performance of these duties, and excludes all other employees in such Division, such as cadets, clerical and housekeeping employees.

(v) “Prison guard” or “corrections officer” means employees in the Bureau of Corrections and the Department of Human Services who perform traditional correctional officer and supervisory correctional officer duties. This definition does not include any others in such Bureau or Department, such as clerical, housekeeping and food service employees or other supervisory or managerial personnel.

(w) “Fireman” means employees in the Division of Fire of the U.S. Virgin Islands Police Department (V.I.P.D.), and similar employees of the Virgin Islands Airport and Industrial Resources Agency, who perform traditional fire fighting or fire prevention duties or direct others in the performance of these duties and excludes all other employees in such Division or Agency, such as clerical and housekeeping employees.

(x) “Eligible employee with the Virgin Islands Water and Power Authority” means every production employee working within the power plant, every lineman or plant operator and his support-crew employees for a period of not less than five years as certified by the Executive Director of the Authority for the purposes of this subchapter only.

(y) “Eligible employee working with chlorine, sewage or carcinogens” means any person employed by the Government of the United States Virgin Islands certified by such department's chief executive officer or his designee as having worked continuously and directly for a period of at least five years with chlorine, sewage or a carcinogen as defined by the *Second Annual Report on Carcinogens* published by the Public Health Service, U.S. Department of Health and Human Services, dated December 1981, as revised for the purposes of this subchapter only.

(z) “Salary right” shall mean compensation earned to include benefits or dues as a result of contract negotiations for the time of employment prior to separation from service.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 702. Definitions / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 94; amended July 18, 1961, No. 776, § 1, Sess. L. 1961, p. 219; May 22, 1967, No. 1987, § 1, Sess. L. 1967, p. 257; Sept. 18, 1967, No. 2049, Sess. L. 1967, p. 441; Apr. 23, 1970, No. 2700, §§ 1, 2, Sess. L. 1970, p. 73; May 23, 1980, No. 4431, § 5, Sess. L. 1980, p. 54; May 23, 1980, No. 4439, § 2, Sess. L. 1980, p. 61; June 15, 1984, No. 4964, § 1(b), Sess. L. 1984, p. 177; Dec. 29, 1986, No. 5226, § 1(a), Sess. L. 1986, p. 375; Aug. 4, 1987, No. 5272, § 4(a), (b), Sess. L. 1987, p. 118; Aug. 2, 1988, No. 5356, § 13, Sess. L. 1988, p. 204; Mar. 15, 1990, No. 5522, § 1(ii), (iii), Sess. L. 1990, p. 34; June 5, 1990, No. 5565, § 14, Sess. L. 1990, p. 205; Dec. 9, 1991, No. 5763, § 2(a), Sess. L. 1991, p. 271; July 21, 1994, No. 5992, § 1, Sess. L. 1994, p. 94; Sept. 24, 2001, No. 6429, § 1, Sess. L. 2001, p. 185; Nov. 2, 2005, No. 6794, § 2 1.–7., Sess. L. 2005, pp. 380, 381; Dec. 29, 2006, No. 6905, § 5(1.), Sess. L. 2006, p. 332; Apr. 12, 2008, No. 6992, § 2, Sess. L. 2008, p. —.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 702. Definitions / Annotations

HISTORY

Revision note

—**1995.** Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsections (b), (c), and (y) for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—**2008.** Act 6992, § 2, added “including all autonomous and semiautonomous agencies of the Government of the Virgin Islands” at the end of subsection (c).

—**2006.** Act 6905, § 5(1.), deleted “compounded annually” following “shall mean interest” in the first sentence in subsection (k).

—**2005.** Act 6794, § 2, in the introductory language, inserted “or a different definition has been

provided elsewhere in the chapter” following “context”; at the end of subsections (b) and (c), added “and its agencies and instrumentalities”; in subsection (o), substituted “five” for “three”; in subsection (s), substituted “October 1” for “July 1” and “September 30” for “June 30”; at the end of subsections (x) and (y), added “for the purposes of this subchapter only.”

—**2001.** Act 6429 substituted “every production employee working within the power plant, every lineman or plant operator and his support-crew employees” for “any person employed by the Authority as a lineman or plant operator” in subsection (x).

—**1994.** Subsection (v): Amended generally.

—**1991.** Subsection (n): Substituted “for” for “in computing” preceding “contributions” and substituted “or in the computation of any annuity or benefit hereunder shall be \$65,000” for “shall not exceed the rate of salary as established by contractual agreement or by fixed salary levels through appointment to a classified or unclassified position” following “members” in the first sentence and deleted the former second sentence.

—**1990.** Subsection (n): Act No. 5522 inserted “or” preceding “remuneration”, substituted “in computing” for “for” preceding “contributions”, deleted “or in the computation of any annuity or benefit hereunder” preceding “shall not exceed” and inserted “or unclassified” preceding “position” in the first sentence and added the second and third sentences.

Subsection (o): Act No. 5522 deleted “consecutive” following “highest”.

Subsection (z): Act No. 5565 substituted “for the” for “during” following “negotiations”.

—**1988.** Subsection (n): Deleted “or” preceding “remuneration” and substituted “not exceed the rate of salary as established by contractual agreement or by fixed salary levels through appointment to a classified position” for “be \$30,000 per year” following “hereunder shall” in the first sentence and deleted the second sentence. Subsection (z): Added.

—**1987.** Subsection (x): Inserted “or” preceding “plant operator” and deleted “or other hazardous duty employee” thereafter. Subsection (y): Inserted “continuously and” following “worked”.

—**1986.** Subsection (x): Added. Subsection (y): Added.

—**1984.** Subsection (u): Substituted “U.S. Virgin Islands Police Department (V.I.P.D.)” for “Department of Public Safety”. Subsection (w): Substituted “U.S. Virgin Islands Police Department (V.I.P.D.)” for “Department of Public Safety”.

—**1980.** Subsection (n): No. 4439 substituted “\$30,000” for “\$20,000.”

Subsection (v): No. 4431 inserted “or corrections officer” and substituted “Bureau of Corrections” for “Division of Police and Prison of the Department of Public Safety”.

—**1970.** Subsection (e): Redefined “employee”. Subsection (n): Substituted “\$20,000 per year” for “\$12,000 per year”. Subsection (o): Redefined “average compensation”.

—**1967.** Subsection (n): Number 1987 substituted “\$12,000 per year” for “\$7,500 per year”.

Added subsections (u), (v) and (w) by Number 2049.

—**1961.** Subsection (e): Extended definition of “employee” to include an official or employee whose position and salary are specifically fixed in the annual appropriation acts.

Effective date of amendments

—**1988.** Act Aug. 19, 1988, No. 5357, § 2, Sess. L. 1988, p. 206, provided that Act Aug. 2, 1988, No. 5356, § 13, Sess. L. 1988, p. 204, which amended this section, was to take effect Feb. 1, 1989.

—**1984.** Act June 15, 1984, No. 4964, § 1(c), Sess. L. 1984, p. 177, provided that the change of name of the Department of Public Safety shall become effective Jan. 1, 1985.

—**1980.** Section 19 of Act Oct. 23, 1980, No. 4498, Sess. L. 1980, p. 231, provided:

“Act No. 4439 (Bill No. 13–0103) [which amended this section and section 706 of this title], enacted May 23, 1980, is hereby made retroactive to January 1, 1980, and shall be deemed applicable and effective on that date.”

—**1970.** Section 17 of Act Apr. 23, 1970, No. 2700 provided: “This Act [amending this section and sections 703, 705–708, 710, 712, 714, 717, and 718 of this title and adding sections 729–731 to this title] shall become effective on July 1, 1970”.

Personnel of Virgin Islands Airport and Industrial Resources Agency. Personnel of Alexander Hamilton Airport, St. Croix, transferred to Virgin Islands Airport and Industrial Resources Agency to continue to be subject to provisions of this chapter, and all officers and employees of such Agency shall be covered by and subject to, with exceptions, the Employees' Retirement System of the Government of the Virgin Islands, see the Governor's Exec. Ord. No. 89–1966, July 13, 1966, set out in note under section 201 of Title 31.

ANNOTATIONS

1. Independent contractors.
2. Temporary, nonappointive employee.
3. Compensation.
4. Eligible employees.

1. Independent contractors.

Visiting physicians who were considered independent contractors and not government employees were not entitled to retirement benefit under the retirement law and no deductions were to be made from their pay for that purpose. 3 V.I.Op.A.G. 3.

2. Temporary, nonappointive employee.

A person employed on a temporary nonappointive basis does not come within the purview of the municipal retirement system. 3 V.I.Op.A.G. 31.

An employee of the municipality who does not come under its retirement system is subject to F.I.C.A. taxes. 3 V.I.Op.A.G. 31.

3. Compensation.

Hazardous duty pay is included within the category of “compensation for special services” within the meaning of wage statute. 9 V.I.Op.A.G. 36.

Compensation for educational differentials is not included within the category of “compensation for

special services” within the meaning of wage statute. 9 V.I.Op.A.G. 36.

4. Eligible employees.

Since statutes distinctly condition eligibility for enhanced early retirement benefits upon certification by a department's chief executive officer, rules empowering the Board of Trustees of the Government Employees Retirement System to make the final determination as to whether the certified position submitted is within the eligible class, providing that the Board at its own discretion may reopen classification of eligible employees, and requiring that certification (offered by the department head) shall state how much chlorine, sewage, or carcinogens is involved on a daily, weekly, monthly or yearly basis, all directly conflicted with the statutory language and were null and void. *Villafane v. Bryan*, 43 V.I. 149, 2001 V.I. LEXIS 8 (Terr. Ct. St. C. 2001).

Employee did not qualify as an “eligible employee with the Virgin Islands Water and Power Authority” where the Executive Director only certified that he worked as a lineman for four and one half years, which falls six months short of the five-year minimum requirement. *Villafane v. Bryan*, 43 V.I. 149, 2001 V.I. LEXIS 8 (Terr. Ct. St. C. 2001).

Employee qualified as an “eligible employee working with chlorine, sewage or carcinogens” where the Executive Director of Virgin Islands Water and Power Authority certified that he worked “continuously and directly” with “PCB”, as a heavy equipment operator for six years and seven months and a mobile equipment operator for twelve years and seven months. *Villafane v. Bryan*, 43 V.I. 149, 2001 V.I. LEXIS 8 (Terr. Ct. St. C. 2001).

Neither Government Employees Retirement System nor its consultant were vested with authority to certify employee's eligibility for early retirement benefits; statute specifically vested Executive Director of Water and Power Authority with that authority, and any attempt by retirement system or its designee to exercise such authority was contrary to law and void as a matter of law. *Commissioning v. Government Employees Retirement Sys.*, 39 V.I. 141, 1998 V.I. LEXIS 23 (Terr. Ct. St. T. and St. J. 1998).

Petition for early retirement benefits was remanded for determination of whether one of employee's positions was an eligible position, since decision as to whether petitioner qualified for enhanced early retirement benefits could not properly be made without that determination. *Commissioning v. Government Employees Retirement Sys.*, 39 V.I. 141, 1998 V.I. LEXIS 23 (Terr. Ct. St. T. and St. J. 1998).

Administrative rule promulgated by Government Employees Retirement System to implement law regarding early retirement benefits was null and void to the extent it added factors, both unauthorized by and contrary to law, that could result in arbitrary decisions as to who was eligible, and retirement system further erred in promulgating rules and regulations which effectively vitiated the eligibility certification of the official solely vested by Legislature with authority to make such certifications. *Commissioning v. Government Employees Retirement Sys.*, 39 V.I. 141, 1998 V.I. LEXIS 23 (Terr. Ct. St. T. and St. J. 1998).

Cited. Cited in *Armstrong v. Board of Trustees, Government Employees Retirement System*, 18 V.I. 551, 1981 U.S. Dist. LEXIS 9344 (D.C.V.I. 1981); *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994); *Fuentes v. Fuentes*, 41 V.I. 86, 1999 V.I. LEXIS 25 (Terr. Ct. St. C. 1999).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 703. Membership

§ 703. Membership

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 703. Membership / Text

The following persons shall be included as members:

(a) Any person who is an employee and in service on September 30, 1959, shall become a member as of the date of establishment.

(b) Any person who becomes an employee on or after the date of establishment shall become a member as a condition of employment, provided such person is under age 55 on the date of appointment. Contributions by such person shall begin upon completion of one month of service, provided that he shall be eligible for duty disability and death benefits from the first day of service subject to the qualifying conditions prescribed for the payment of such benefits.

(c) Any person whose position and salary are specifically fixed in the annual appropriation acts.

(d) Any person employed by the employer who is not elsewhere excluded by the Virgin Islands Code from membership and whose term of employment is for at least one year, provided that an initial appointment to a position for the remainder of the then current fiscal year be considered as meeting this requirement.

(e) Notwithstanding the provisions of subsection (b) of this section, any person who is over 55 years of age on the date of his first appointment and who elects the option referred to in subsection (i), section 704 of this chapter.

(f) The following persons shall be excluded from membership in the system:

(1) Any employee whose services are compensated on a contractual or fee basis; Provided, however, That any such employee may, at his option, be included as a member if he has at least five years of prior credited service.

(2) Any casual or per diem employee.

(3) Any part-time employee who does not regularly work at least 50 percent of the normal work period.

(4) Any provisional employee.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 703. Membership / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 96; amended Nov. 28, 1960, No. 652, § 1, Sess. L. 1960, p. 205; July 18, 1961, No. 776, § 2, Sess. L. 1961, p. 219; May 22, 1967, No.

1987, § 2, Sess. L. 1967, p. 257; Apr. 23, 1970, No. 2700, § 3, Sess. L. 1970, p. 74, § 16, Sess. L. 1970, p. 84; Feb. 14, 1980, No. 4403, Sess. L. 1980, p. 7; Aug. 26, 1994, No. 6007, § 9(a), Sess. L. 1994, p. 159.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 703. Membership / Annotations

HISTORY

Amendments

—**1994.** Subsection (b): Substituted “month” for “year” and deleted the former third sentence.

—**1980.** Subsection (e): Substituted “55” for “60”.

—**1970.** Subsection (b): Reduced age from “60” to “55” for membership as a condition of employment and added provisions relating to contributions. Subsection (f): Subdivision (1) added proviso.

—**1967.** Subsection (d): Relettered as subsection (f). Subsections (d), (e): Added.

—**1961.** Subsection (c): Added. Subsection (d): Former subsec. (c), redesignated “(d)”.

—**1960.** Subsection (c) [now (d)]: In clause (2), deleted the reference to part-time employees, inserted clause (3) relating to part-time employees, and redesignated the clause relating to provisional employees (enacted as clause (3)) as clause “(4)”.

Effective date of amendments

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

—**1960.** Act Nov. 28, 1960, No. 652, § 2, Sess. L. 1960, p. 205, provided that the amendment of this section by section 1 thereof should be retroactive to Oct. 1, 1959.

Nonprofit corporation employee. Act Oct. 23, 1980, No. 4498, § 11, Sess. L. 1980, p. 229, provided:

“Any person employed by a non-profit corporation which has been funded 75% or more each year from federal or local government monies may join the Government Employees Retirement System without prejudice. Such employee or any government employee shall be credited with past years employment in such corporation upon payment of an amount which equals the payments the employee would have paid into the system had he been a member of the system during those years.”

Personnel of the College [University] of the Virgin Islands. Act Dec. 17, 1985, No. 5118, § 2, Sess. L. 1985, p. 170, as amended by Act. Oct. 14, 1986, No. 5206, § 111, Sess. L. 1986, p. 239, provided:

“Teaching, administrative faculty and other personnel of the College [University] of the Virgin Islands who are enrolled in the Teacher's Insurance and Annuity Association or other similar retirement systems may remain in those systems or elect to enroll in the Government Employees Retirement System,

provided the employee is otherwise eligible for membership under Title 3, section 703 of the Code; and, provided further, the election to join the Government Employees Retirement System shall be made prior to December 1, 1986.

“An employee wishing to receive credit toward the service retirement annuity for service earned prior to the election to join the Government Employees Retirement System shall be credited with past years employment at the College [University] of the Virgin Islands upon payment of an amount which equals the payments the employee would have paid into the system had the employee been a member of the system for the period in which the credit is sought.”

CROSS REFERENCES

Senior citizens, employment program, continued eligibility for benefits under retirement system, see section 452a of this title.

ANNOTATIONS

1. Prior law.
2. Annuities for nonappointed government employees.
3. Employees not covered.
4. Particular cases covered.

1. Prior law.

The Retirement Act of July 18, 1947, made no distinction between full-time or part-time employment, and there was nothing to suggest that the minimum annuity could be reduced in the case of part-time employees. 1 V.I.Op.A.G. 285.

Part-time municipal employees were entitled as a matter of law to the minimum annuity provided for in the Retirement Act of 1947. 1 V.I.Op.A.G. 285.

2. Annuities for nonappointed government employees.

Legislation providing annuities for nonappointed government employees is not invalid class legislation. 3 V.I.Op.A.G. 21.

Since pensions are in the nature of compensation, the Legislature is empowered to provide annuities for nonappointed government employees. 3 V.I.Op.A.G. 21.

Legislation providing annuities for nonappointed government employees is not invalid because the employees benefited do not contribute to the retirement fund, since the amount of the benefits is not comparable to the amount received by employees who have contributed to the retirement fund. 3 V.I.Op.A.G. 21.

3. Employees not covered.

Retirement benefits under the Government Employees Retirement System are not available to employees whose services are compensated on a contractual or fee basis or to casual, daily, provisional or part-time employees who do not regularly work at least 50 percent of the normal work week period. 7 V.I.Op.A.G. 73.

4. Particular cases covered.

Employees of Virgin Islands Energy Office are eligible for membership in the Employees Retirement System of the Government of the Virgin Islands. 10 V.I.Op.A.G. 9.

There is no distinction between classified and unclassified (exempt) employees with respect to eligibility to participate in the Government Employees Retirement System (GERS). 10 V.I.Op.A.G. 106.

Unclassified (exempt) employees are required by law to become members of the Government Employees Retirement System (GERS) as a condition for continued employment. 10 V.I.Op.A.G. 106.

Cited. Cited in Government of the Virgin Islands ex rel. Albany v. Andrews, 24 V.I. 34, 1988 V.I. LEXIS 40 (Terr. Ct. St. C. 1988); Molloy v. Monsanto, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 704. Credited service

§ 704. Credited service

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 704. Credited service / Text

(a) Subject to the provisions of section 721 of this title each employee in service on the date of establishment shall receive credit as prior service for all service rendered in any department, division or agency of the employer, except such service as is excluded by section 703(c) of this title; Provided, That any employee who may have received a refund under predecessor systems shall repay within five years the amounts refunded in order to gain credit for said prior service; And provided further, That any employee who was excluded from coverage under predecessor systems but who worked continuously for the Government of the United States Virgin Islands shall receive credit for said prior service if within five years of date of establishment such employee repays an amount equal to contributions which would have been deducted from his salary during said period. The prior service credit to be granted a member shall be for the same periods of time as granted under applicable registration relating to the existing retirement funds. Additionally, the member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, and the income the system would have earned had those contributions remained in the system, and the interest on the unpaid balance, if the member elects to redeposit on an installment basis. If the member elects to repay on an installment basis, the member shall have the maximum of 36 months. The member shall repay the withdrawn contributions and the applicable interest before receiving his annuities.

(b) Any employee who shall not be in service on the date of establishment, who reenters service thereafter, shall be entitled to receive credit for prior service providing he repays, within five years from date of reentry, all amounts refunded under any system.

(c) Any employee who shall not be in service on the date of establishment, who reenters

service thereafter, shall be entitled to receive credit for prior service rendered prior to predecessor systems.

(d) (1) Any employee shall be entitled to credited service, up to a maximum of 3 years, for all military service in the Armed Forces of the United States, including the army, navy, marines or coast guard, merchant marine, air force or any auxiliary thereof, either by enlistment or induction. Provided, that such employee must have been a bona fide Virgin Islands resident prior to entering military service and pays an amount equal to contributions which would have been deducted from his salary during the period.

(2) However, all members of the system who are vested on the enactment date of this subsection and have earned credited service shall maintain their credit earned before the effective date of this paragraph.

(e) Prior service credit and membership service credit shall also include such time as a member has been in military service, not to exceed 3 years.

(f) Any member shall be entitled to credit as prior service or membership service, as the case may be, for any period of approved leave of absence without compensation, under rules in force, which shall not exceed an aggregate period of 24 months during the entire period of credited service of the member. The member shall pay to the system the income the system would have earned had those contributions been paid to the system during the period of his approved leave of absence without compensation, and the interest on the unpaid balance, if the member elects to deposit on an installment basis. If the member elects to pay on an installment basis, the member shall have the maximum of 36 months and before any retirement benefits are received to pay the contributions and applicable interest.

(g) In the computation of total credit for prior service or membership service, nine months or more of service shall constitute one year of service; six to eight months inclusive, shall constitute three-quarters (.75) of a year; three to five months inclusive, shall constitute one-half (.50) of a year; less than three months shall constitute one-quarter (.25) of a year not more than one year service credit shall be granted for all service rendered during a fiscal year. Fifteen days or more of service during any month shall constitute a month of service; five to fourteen days inclusive, shall constitute one-half (.50) of a month; less than five days, inclusive, shall constitute one-quarter (.25) of a month.

(h) [Reserved for future use.]

(i) No credited service benefit may be paid to any government employee for excess annual leave, sick leave, leave without pay, federal service in the V.I., study leave, or for prior military service until the system has received retirement contributions payments from the employer and employee.

(j) Notwithstanding any other provision of this chapter, any person who is presently a

member of this system who has rendered prior permanent or continuous service to the Government of the United Virgin Islands, or the federal government in the Virgin Islands, and for which credit under this system has not been received, may receive credit for the prior service by contributing to the system contributions at the respective rates assessed for each period or portion of non-credited service the member seeks to receive credit. The member shall pay to the system the contributions and the income the system would have earned had those contributions been paid to the system, and the interest on the unpaid balance, if the member elects to deposit on an installment basis. If the member elects to pay on an installment basis, the member shall have the maximum of 36 months before any retirement benefits are received to pay the contributions and the applicable interest.

(k) Any employee shall be entitled to credited service as a member of the Legislature, as defined in Title 3, section 714, Virgin Islands Code, provided such service is not applied to legislative service retirement as provided in Title 3, section 714, Virgin Islands Code.

(l) If the employer fails or refuses to remit contributions on behalf of any employee for any period wherein service credit is being or has been sought, the employee may remit to the system a sum that equals the employer's and the employee's contributions for the period of credited service he has elected to obtain.

(m) Employee or employer contributions for service credit on which benefits are to be calculated must be paid prior to the date of issuance of the first retirement benefits payment.

(n) The required contributions for any service which have not been made for prior service, past service, military service, leave of absence service, and in the territory service, must be paid by cash, personal check or money order. The contributions must be accompanied by a statement identifying the service for which payment is made and must be made in lump sum for the total due or in annual payments of not less than \$500, except for the final payment if less than \$100, unless another method of payment is authorized by the Board of Trustees. Interest must be added annually to any unpaid balance not received by the Benefits Division on or before October 1 of each year.

(o) The required contributions for any service which have not been made prior to a member's retirement may not be made by any person after the member's retirement. The required contributions for any service which have not been made by the members before his death prior to his retirement may be made only by those authorized by the Board of Trustees to purchase the service.

(p) A member may make the required contributions for past service not made by his employer.

(q) Retirement contributions paid for a prior period, whether by employer or by member, must be charged a delinquent fee of 1.5% for each calendar month or part thereof that paid contributions should have been paid. This includes prior period contributions due to incorrect

wages and contributions from an earlier report or wages and contributions that should have been reported, but were not. This delinquent assessment may not be waived. If the delinquent assessment is not remitted within thirty days following the Benefits Division invoice, an additional delinquent assessment of 1.0% on the invoice amount shall be assessed for each calendar month or part thereof that the invoice is delinquent.

(r) Retirement contributions not remitted timely as prescribed by this chapter are delinquent, unless at the opinion of the Administrator, exceptional circumstances beyond the employer's control prevented payment by the prescribed due date and a waiver of the delinquent fee is granted by the Administrator. A waiver may be granted only once for an employer during any one fiscal year. The employer shall pay the assessed delinquent fee, plus any additional delinquent charges that have accumulated during the time required to renew the request for a waiver of the delinquency charge.

(s) If an employer fails to pay the total amount due within one hundred twenty calendar days from the date of the system's invoice, the Administrator shall notify the Board and certify the amounts due to the system. The Board shall determine the appropriate action to be taken.

(t) Contributions may not be made prior to the service being performed. Payment of the required employee retirement contributions for other than current service must be made in accordance with the provisions of this chapter. Contributions for the purchase of additional service may not be made prior to the accrual of five years of credited service.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 704. Credited service / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Apr. 4, 1966, No. 1671, Sess. L. 1966, p. 137; May 22, 1967, No. 1987, § 3, Sess. L. 1967, p. 258; Nov. 19, 1969, No. 2594, Sess. L. 1969, p. 401; Feb. 15, 1973, No. 3389, Sess. L. 1972, p. 574; Mar. 26, 1973, No. 3405, § 1, Sess. L. p. 30; Feb. 1, 1985, No. 5039, § 1, Sess. L. 1984, p. 462; Mar. 15, 1990, No. 5522, § 1(iv), Sess. L. 1990, p. 34; May 20, 1994, No. 5979, § 2(b), Sess. L. 1994, p. 70; Sept. 25, 2001, No. 6430, §§ 3, 4, Sess. L. 2001, pp. 188–189; Jan. 31, 2006, No. 6794, § 3 1.–7., Sess. L. 2005, pp. 381–384.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 704. Credited service / Annotations

HISTORY

Revision note

—1995. Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsection (a), (h)(1), (h)(2), and (j) for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—**2005.** Act 6794, § 3, in subsection (a) added “Additionally, the member ... his annuities” at the end; in subsection (d), designated previous provisions as paragraph (1) and added paragraph (2); in subsection (f), added “The member shall ... applicable interest” at the end; deleted subsection (h) and reserved it for future use; rewrote subsections (i) and (j); and added subsections (l) through (t).

—**2001.** Act 6430 substituted “3” for “10” in subsections (d) and (e) and added the second sentence in (d), and added subsection (h)(4).

—**1994.** Subsection (i)(3): Added.

—**1990.** Subsection (g): Amended generally.

—**1984.** Subsection (k): Added.

—**1973.** Subsection (d): Act No. 3405 added reference to “air force” and omitted proviso relating to prior employer and return to service of the employer.

Subsection (j): Added by Act No. 3389.

—**1969.** Subsection (i): Subdivision (2) amended by omitting the words “prior to retirement” in the first proviso and added a third proviso relating to payment of contribution into the system for certain retirement years.

—**1967.** Subsection (i): Added.

—**1966.** Subsection (h)(1), (2), (3): Added.

Effective date of amendments

—**1973.** Section 2 of Act Mar. 26, 1973, No. 3405, p. 30, provided:

“The provisions of section 1 of this Act [amending subsection (d) of this section], and the additional benefits deriving therefrom, shall apply to all employees qualifying therefor who are in Government service on the effective date of this Act [approved March 26, 1973], or who enter such service thereafter.”

ANNOTATIONS

1. Credit for leave time.
2. Credit for military service.
3. Purchase of prior services.

1. Credit for leave time.

Where law provided that a member of the territorial employees retirement system with five years of contributions to the system could borrow from the system to build or improve a home, employee who had contributed for four years and had a year of credited service for leave without pay could borrow from the system upon paying the contributions which would have been deducted from her salary while she was on leave had she not been on leave. 7 V.I.Op.A.G. 254.

2. Credit for military service.

Since retirement credit is given to military personnel under subsection (d) of this section to permit them to make up for the time not accumulated toward retirement eligibility as a civilian, and inactive reservists pursue regular employment, therefore suffering no such loss of time, retirement credit should not be given for inactive service. *Armstrong v. Board of Trustees, Government Employees Retirement System*, 18 V.I. 551, 1981 U.S. Dist. LEXIS 9344 (D.C.V.I. 1981).

Where an employee of the Government of the Virgin Islands claimed that his time spent on inactive service with the United States Navy should be included in the computation of creditable service for retirement, and the federal government did not include service in the inactive reserve in computing retirement eligibility of federal employees, the court would not interpret subsection (d) of this section, which gives credited service for time spent in the navy, to include inactive service. *Armstrong v. Board of Trustees, Government Employees Retirement System*, 18 V.I. 551, 1981 U.S. Dist. LEXIS 9344 (D.C.V.I. 1981).

3. Purchase of prior services.

Whenever persons are designated in a statute, there is a legitimate inference that all omissions should be understood as exclusions. 10 V.I.Op.A.G. 56.

Whenever a member of the Government Employees Retirement System (GERS) elects to purchase his previous governmental service, the government/employer does not have a corresponding obligation to contribute to the GERS. 10 V.I.Op.A.G. 56.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 705. Conditions for service retirement

§ 705. Conditions for service retirement

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 705. Conditions for service retirement / Text

(a) An application for an annuity shall be in writing, addressed to the Board in care of the Administrator. The annuity when granted shall begin as of the 1st day of the month next following the date of withdrawal from service. In no case shall an annuity become effective prior to the aforesaid date nor more than 60 days prior to the receipt of the application from the member.

(b) Any member retiring pursuant to the provisions of this chapter shall notify, in writing, his Department Head and the Administrator, of his intent to retire at least three (3) months prior to the date of his retirement; but in no event shall a member give less than sixty (60) days notice of his intent to retire.

(c) In the case of a policeman, fireman or prison guard, such automatic retirement shall occur at the age of fifty-five years or over after attaining a minimum of ten years of credited service; notwithstanding that withdrawal from service may have occurred prior to the time that application for annuity is made. The mandatory retirement age, as established in this subsection,

may be temporarily waived as provided in section 530(g) of this title.

(d) Any member who has completed thirty years of credited service may retire on a full service retirement annuity notwithstanding his age, without reduction of annuity. Additionally, any member who is age fifty (50) years with ten (10) but less than thirty (30) years of service may retire on a service annuity which shall be reduced by .325 of one percent for each month, or fraction thereof, that the member's age is less than sixty (60) years. A policeofficer, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshal of the Superior Court and Supreme Court, probation officer of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer who has completed twenty (20) years or more of credited service as a policeofficer, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshal and probation officer of the Superior Court, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, or corrections officer, or combination thereof, may retire notwithstanding his age without reduction of annuity.

(e) Any member whose withdrawal from service occurs:

(1) prior to age sixty (60) years and after at least ten (10) years of credited service; or

(2) in the case of a policeofficer, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a firefighter employed by the Virgin Islands Port Authority, marshal of the Supreme Court or the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title, 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, or corrections officer, prior to age fifty-five (55) years and after at least ten (10) years of credited service but not as much as twenty (20) years of credited service, and who has not received a refund of accumulated contributions, shall be entitled to receive a deferred service retirement annuity payable upon attainment of age sixty (60) or fifty-five (55) years, as the case may be.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 705. Conditions for service retirement / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Feb. 23, 1966, No. 1583, §§ 1, 2, Sess. L. 1966, p. 31; May 22, 1967, No. 1987, § 4, Sess. L. 1967, p. 258; Apr. 23, 1970, No. 2700, § 4, Sess. L. 1970, p. 74; May 23, 1980, No. 4431, §§ 1, 2, Sess. L. 1980, p. 52, 53; Oct. 23, 1980, No. 4498, § 25, Sess. L. 1980, p. 223; Oct. 20, 1981, No. 4641, Sess. L. 1981, p. 244; Sept. 17, 1982, No. 4741, § 17, Sess. L. 1982, p. 149; Dec. 29, 1986, No. 5226, § 1(b), Sess. L. 1986, p. 375; Mar. 15, 1990, No. 5522, § 1(v)–(vii), Sess. L. 1990, p. 35; Aug. 9, 1994, No. 6002, § 1(a), Sess. L. 1994, p. 134; Aug. 26, 1994, No. 6007, § 9(b), Sess. L. 1994, p. 159; Aug. 22, 1995, No. 6075, § 7(b)(1), Sess. L. 1995, p. 197; June 30, 2000, No. 6353, § 17(a), Sess. L. 2000, p. 86; Nov. 2, 2005, No. 6794, § 4, Sess. L. 2005, p. 384; Dec. 29, 2006, No. 6905, § 5(2.), Sess. L. 2006, pp. 332–334; Apr. 16, 2007, No. 6917, § 5(a), Sess. L. 2007, p. 14.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 705. Conditions for service retirement / Annotations

HISTORY

Amendments

—**2007.** Act 6917, § 5(a), rewrote subsections (d) and (e).

—**2006.** Act 6905, § 5(2.), deleted “Every member shall be retired automatically on a service retirement annuity upon reaching the age of seventy years, and after attaining a minimum of ten years of credited service, except that” from the beginning of subsection (c), and rewrote subsection (d).

—**2005.** Act 6794, § 4, in subsection (a), substituted “60” for “90”; and in subsection (b), deleted “provided, however that the Department Head may waive the three month requirement” following “of his retirement.”

—**2000.** Subsection (d): Inserted “and probation officer” following “marshal” twice in the third sentence.

—**1995.** Subsection (d): Inserted “internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department” following “Territorial Court [now Superior Court]” in two places in the third sentence. Subsection (e)(2): Inserted “internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department” following “Territorial Court [now Superior Court]”.

—**1994.** Subsection (d): Act No. 6002 inserted “peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals” following “Territorial Court [now Superior Court]” in two places in the third sentence.

Act No. 6007 deleted “%” following “.325”.

Subsection (e)(2): Act No. 6002 inserted “peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals” following “Territorial Court [now Superior Court]”.

—**1990.** Subsection (b): Amended generally. Subsection (d): Rewrote the first sentence, added the second sentence and substituted “twenty (20)” for “20” following “completed” and made a minor change in punctuation in the third sentence. Subsection (e): Made minor stylistic changes in the introductory paragraph, inserted “(60) years” following “sixty” and “(10)” following “ten” in paragraph (1), deleted former paragraph (2), redesignated former paragraph (3) as new paragraph (2) and inserted “(55) years” following “prior to age fifty-five”, “(10)” following “ten” and “(20)” following “twenty”, deleted “fifty-five or” preceding “sixty” and inserted “(60) or fifty-five (55)” thereafter.

—**1986.** Subsection (d): Inserted “eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens” following “policeman” in two places. Subsection (e)(3): Inserted “eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens” following “policeman”.

—**1982.** Subsection (c): Substituted “seventy” for “sixty-five” preceding “years, and after” in the first sentence and deleted “of sixty-five years and fifty-five years” preceding “as established” in the second sentence.

—**1981.** Subsection (d): Inserted “including a fireman employed by the Virgin Islands Port Authority” after “fireman” in two places in the second sentence. Subsection (e)(3): Inserted “including a fireman employed by the Virgin Islands Port Authority” after “fireman”.

—**1980.** Subsection (d): Inserted period after “fifty-five years” and rewrote remainder of subsection as new second sentence, and inserted “marshall of the Territorial Court [now Superior Court]” after “fireman”. Subsection (e)(3): Inserted “marshall of the Territorial Court [now Superior Court]” following “fireman” and substituted “corrections officer” for “prison guard”.

—**1970.** Subsection (a): Amended generally.

—**1967.** Amended section generally.

—**1966.** Subsection (a): Inserted “or has attained the age of 55 years on the date of retirement and has at least 35 years of credited service,”. Subsection (c): Amended subsection generally by designating portion of former text as paragraph (1), by adding paragraph (2) and by inserting reference to subsection (a).

Effective date of amendments

—**1970.** Amendment of this section, by Act April 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

Applicability of provision. Act May 22, 1967, No. 1987, §§ 11, 12, Sess. L. 1967, p. 262, provided:

“The mandatory retirement and separation provisions of this Act shall apply to employees of the Government of the Virgin Islands who have, on the effective date of this Act, attained the age of 65 or over, or age 55 in the case of a policeman, fireman, or prison guard, except that such employee may be continued in the government service for a period not to exceed five years from said effective date provided that he applies for and obtains an annual certification from the Commissioner of Health that such employee is physically and mentally able to continue in his position.

“Any change in benefits resulting from the provisions of this Act shall, unless otherwise provided in this Act, be applicable only to members on active service and persons who retire under the provisions of the system on or after the effective date of this Act.”

Act Feb. 23, 1966, No. 1583, § 3, provided:

“The provisions incorporated in Section 705, Title 3, Virgin Islands Code [this section] by this Act [amending subsections (a) and (c) of this section] shall apply to every person who is or has been a member of the Employees Retirement System of the Government of the Virgin Islands pursuant to Section 703, Title 3, Virgin Islands Code.”

Limited period for electing early retirement option; rate of compensation; reduction of filled positions. Act Nov. 7, 1983, No. 4877, § 212, Sess. L. 1983, p. 223, as amended by Act Dec. 23, 1983, No. 4879, § 5, Sess. L. 1983, p. 250; Feb. 21, 1984, No. 4896, §§ 1, 2, Sess. L. 1984, p. 30, provided:

“(a) It is the purpose of this section [of this act] to provide a limited period in which members of the Government Employees Retirement System may elect, under certain conditions, to retire early from government service with increased benefits. It is the intention of the Legislature that these elected early retirements shall result in a reduction in the work force of the Government of the Virgin Islands.

“(b) Any member of the Government Employees Retirement System may elect to retire under the provisions of this section if the election and effective date of their retirement are made on or before February 29, 1984; Provided, however, That any such member who is an employee of the Department of Education and who reports directly or indirectly to the District Superintendent of Schools may, as an alternative, elect to retire under the provisions of this section if the election is made on or before February 29, 1984 and the effective date of his or her retirement is August 29, 1984.

“(c) Notwithstanding the provisions of Title 3, chapter 27, sections 705(d) and 706(a), Virgin Islands Code, a member qualifying to make an election under this section shall receive a service retirement annuity, payable semi-monthly, computed at the rate of 3.0% of average compensation times the number of years credited service, not to exceed 40 years or computed at the rate of 2.5% of average compensation times the number of years of credited service plus 3 years of credited service, not to exceed 40 years, whichever is greater; such annuity shall not be reduced for early retirement, but shall be reduced pursuant to Title 3, chapter 27, section 707, Virgin Islands Code, if the member elects an option under section 707. Notwithstanding the provisions of Title 3, section 714, Virgin Islands Code, in order to fully effect the purpose of the Early Retirement Incentive provisions, and for the duration of the period of election under this section, any previous member of the Legislature who has earned credited service, as a member of the Legislature, may elect to transfer such earned credited service as earned credited service pursuant to Title 3, section 704, Virgin Islands Code, and membership in the Retirement System pursuant to Title 3, section 703, Virgin Islands Code; provided the application was filed with the Retirement System on or before February 29, 1984.

“(d) The head of the executive, legislative, and judicial branches and the head of each independent instrumentality, independent board or agency of the Government of the Virgin Islands, which branch, instrumentality, board or agency is funded by an appropriation for personal services and fringe benefits in the fiscal year ending September 30, 1984, shall reduce the aggregate number of filled positions of the respective branch, instrumentality, board or agency by one permanent position for each employee of such branch, instrumentality, board or agency electing early retirement under this section.

“(e) Notwithstanding the 90 day limitation established under section 731(a) of Title 3, Virgin Islands Code, an employee who elects to retire under this section may also elect to have his entire accumulated and unused sick leave credited towards his service retirement annuity. The service credit shall be calculated in the same manner as set forth in section 731 of Title 3, Virgin Islands Code. However, a person who makes an election under this subsection is not entitled to any lump sum payment with respect to his accumulated and unused sick leave.”

Period for review of service retirement options by employees having previously elected early retirement option; election of other options. Act May 14, 1985, No. 5060, § 123, Sess. L. 1985, p. 37, provided:

“Any person who, as a member of the Government Employees Retirement System, elected to retire early from government service in accordance with the provisions of section 212 of Act No. 4877 (Bill No. 15-0650) [which is set out as a note above], enacted into law November 7, 1983, as amended, shall have sixty (60) days from the date of enactment of this act [May 14, 1985] to review the service retirement options available under Title 3, chapter 27 of the Code, including but not limited to the options relating to health and life insurance benefits. Said person may elect an option under Title 3, chapter 27 of the Code, notwithstanding any such election that may have been made at the time of the election to retire.”

ANNOTATIONS

0.5. Construction.

- 1. Policemen, firemen and corrections officers.**

0.5. Construction.

Petitioner seeking early retirement benefits was not required to have worked in one eligible position for a period of twenty years; he was free to work in any number of eligible positions, so long as each position was eligible and so long as the cumulative time spent in all eligible positions was for a period of at least twenty years. *Commissiong v. Government Employees Retirement Sys.*, 39 V.I. 141, 1998 V.I. LEXIS 23 (Terr. Ct. St. T. and St. J. 1998).

1. Policemen, firemen and corrections officers.

A policeman, fireman or corrections officer must be in government service for 20 years in one of these positions (or combination thereof) in order to retire without regard to age and without a reduced annuity. 9 V.I.Op.A.G. 185.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706. Amount of service retirement annuity

§ 706. Amount of service retirement annuity

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706. Amount of service retirement annuity / Text

(a) Upon retirement from service, a member shall receive a service retirement annuity, payable semi-monthly, computed at the rate of 2.5% of average compensation times the number of years of credited service, not to exceed 40 years.

To the amounts of annual service retirement annuity produced by the application of the foregoing rates in any case in which average compensation is \$4,500 per year or less shall be added the sum of \$20.00 per year of credited service, and in any case in which average compensation is over \$4,500 but not more than \$6,000 per year, shall be added the sum of

\$10.00 per year of credited service, however, the foregoing shall not apply to any person with 40 or more years credited service. Notwithstanding any other provision of this chapter, the service retirement annuity of any member or special pensioner who has at least 20 years of credited service regardless of the retirement law in effect when the member retired, shall be not less than \$2,400 per year; provided that the service retirement annuity of any such member or special pensioner who has at least 20 years of credited service, and who is not eligible to receive Social Security benefits, shall be not less than \$3,600 per year; and provided further, that for the purposes of this provision establishing minimum retirement annuities, the term “member” shall include all members and annuitants of the system and all annuitants of the superseded retirement funds incorporated into the system pursuant to section 721 of this chapter.

A proportional amount of service retirement annuity shall be determined and granted for a fractional part of a year of service at the end of the total service period.

(b) In the case of a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, or corrections officer, or combination thereof:

(1) The retirement annuity, for credited service of less than 20 years, shall be as provided in subsection (a) of this section, but not less than two percent of average compensation per year of credited service.

(2) The retirement annuity for credited service of 20 years or more as a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, corrections officer, or combination thereof, shall be the annuity produced by 3 percent of average compensation per year of credited service, but in no event shall the retirement benefits payable to a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of

Health or the Virgin Islands Hospitals, or corrections officer or combination thereof under the provisions of this chapter exceed 90 percent of average compensation, except as increased by paragraph (3) of this subsection; Provided, however, That any member qualifying for benefits under this paragraph may elect to receive such benefits or the benefits payable for his years of credited service under subsection (a) of this section.

(3) Beginning with the first day of the month coincident with or next following the date following the date on which the retired policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer has attained the age of sixty years and who has qualified for annuity payments under paragraph (2) of this subsection, the retirement benefits granted under this section shall be increased by 1.5 percent per annum and shall be increased by an additional 1.5 percent per annum each year thereafter.

(4) [Repealed.]

(c) Any member receiving a service retirement annuity who reenters the service of the government may continue to receive his annuity while in receipt of salary from the Government, either by appointment or on a contractual basis, for a period of time not to exceed 75 days each year. At the end of such period, the service retirement annuity shall be cancelled and the member shall thereupon again become a contributor to the system. Upon subsequent retirement, the member shall receive a retirement annuity which shall consist of (a) the previous retirement annuity which had been cancelled, plus (b) the additional retirement annuity earned during reemployment. If such member renders at least 3 years of additional service during reemployment, his retirement annuity shall be recalculated according to the provisions of the retirement system in effect at the date of his latest retirement based upon his entire period of service including service rendered both before and after the date of reemployment by the government, provided that the annuity shall in no event be less than the amount originally granted.

(d) Notwithstanding any other law, no member shall receive a service retirement annuity in an amount that exceeds \$65,000 per annum exclusive of any cost of living annuity, bonuses or adjustments.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706. Amount of service retirement annuity / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended May 22, 1967, No. 1987, §

5, Sess. L. 1967, p. 259; Apr. 23, 1970, No. 2700, § 5, p. 74; Sept. 29, 1970, No. 2822, §§ 1, 2, p. 317; July 22, 1972, No. 3273, § 1, Sess. L. 1972, p. 228; July 8, 1974, No. 3593, §§ 1, 2, Sess. L. 1974, p. 189; Apr. 22, 1977, No. 3963, § 3, Sess. L. 1977, p. 39; June 5, 1978, No. 4132, Sess. L. 1978, p. 83; Aug. 10, 1978, No. 4190, Sess. L. 1978, p. 209; May 23, 1980, No. 4431, § 3, Sess. L. 1980, p. 53; May 23, 1980, No. 4439, § 1(a), Sess. L. 1980, p. 60; Oct. 23, 1980, No. 4498, § 25, Sess. L. 1980, p. 233; Oct. 20, 1981, No. 4641, Sess. L. 1981, p. 244; Mar. 15, 1984, No. 4902, § 34, Sess. L. 1984, p. 67; Dec. 29, 1986, No. 5226, § 1(b), Sess. L. 1986, p. 375; Mar. 15, 1990, No. 5522, § 1(viii), Sess. L. 1990, p. 36; Dec. 9, 1991, No. 5763, § 2(b)(1), Sess. L. 1991, p. 271; Aug. 9, 1994, No. 6002, § 1(b), Sess. L. 1994, p. 134; Aug. 26, 1994, No. 6007, § 9(c), Sess. L. 1994, p. 159; Aug. 22, 1995, No. 6075, § 7(b)(2), Sess. L. 1995, p. 197; Dec. 1, 2001, No. 6479, § 5, Sess. L. 2001, p. 323; Jan. 10, 2003, No. 6571, § 17, Sess. L. 2002, p. 598; July 11, 2005, No. 6732, § 43, Sess. L. 2005, p. 158; Apr. 16, 2007, No. 6917, § 7, Sess. L. 2007, p. 16; June 24, 2009, No. 7070, § 3, Sess. L. 2009, p. —.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706. Amount of service retirement annuity / Annotations

HISTORY

Editor's note.

Act 6732, § 43, Sess. L. 2005, p. 158, amended this section. This section of Act 6732 was originally objected to by the Governor but that objection was ultimately overridden by the Legislature.

Act Mar. 15, 1984, No. 4902, § 34, Sess. L. 1984, p. 67, repealed paragraph (4) of subsection (b), section 706.

Amendments

—**2009.** Act 7070, § 3, added “exclusive of any cost of living annuity, bonuses or adjustments” at the end of subsection (d).

—**2007.** Act 6917, § 7, inserted “each year” following “75 days” in the first sentence of subsection (c).

—**2005.** Act 6732, § 43, substituted “75 days” for “three years” in the first sentence in subsection (c).

—**2002.** Act 6571, § 17, in subsection (c), substituted “three years” for “75 days” at the end of the present first sentence; and deleted “, except that a member who reenters service in the Legislature may continue to receive his annuity for a period not to exceed one year” from the end of the first sentence.

—**2001.** Act 6479 added “except that a member who reenters service in the Legislature may continue to receive his annuity for a period not to exceed one year” at the end of the first sentence in subsection (c).

—**1995.** Subsection (b): Inserted “internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department” following “Territorial Court [now Superior Court]” in the introductory paragraph, in two places in paragraph

(2) and in paragraph (3).

—**1994.** Subsection (b): Act No. 6002 inserted “peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals” following “Territorial Court [now Superior Court]” in the introductory paragraph, in two places in paragraph (2) and preceding “or corrections” in paragraph (3).

Subsection (c): Act No. 6007 inserted “either by appointment or on a contractual basis” following “government” in the first sentence.

—**1991.** Subsection (d): Added.

—**1990.** Subsection (b): Added “or combination thereof” following “officer” at the end of the introductory paragraph, inserted “of this section” following “subsection (a)” in paragraph (1) and inserted “or combination thereof” preceding “under the provisions” and added “of this section” following “subsection (a)” in paragraph (2).

—**1986.** Subsection (b): Inserted “eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens” following “policeman” wherever it appeared.

—**1981.** Subsection (b): Inserted “including a fireman employed by the Virgin Islands Port Authority” after “fireman” in the introductory clause and in paragraphs (2) and (3).

—**1980.** Subsection (a): Amended generally by Act No. 4439.

Subsection (b): Amended generally by Act No. 4431.

—**1978.** Subsection (a): Second paragraph, last sentence was amended by Act No. 4190 which inserted references to “special pensioners”. Act No. 4132 provided a minimum retirement annuity for government employees with 20 years of credited service who are ineligible to receive Social Security benefits.

—**1977.** Subsection (a): Minimum annuity increased from “\$1800” to “\$2,400” per annum for any member who has at least 20 years of credited service.

—**1974.** Subsection (a): Amended generally. Subsection (c): Repealed and redesignated from subsection (d). Subsection (d): Former subsection (d) redesignated as subsection (c). Subsection (e): Repealed.

—**1972.** Subsection (e): Added new sentence providing for removal of special pension upon acceptance of an annuity.

—**1970.** Act No. 2700 amended section generally.

Subsection (c): Act No. 2822 added reference to subsection (e).

Subsection (e): Added by Act No. 2822.

—**1967.** Plan A: Added provision “or, in the case of a policeman, two percent (2%) of average compensation for each full year of credited service as a policeman”, and substituted “fifteen percent (15%)” for “20 percent”. Plan B: Substituted “fifteen percent (15%)” for “20 percent”.

Effective date of amendments

—**1980.** Section 19 of Act Oct. 23, 1980, No. 4498, Sess. L. 1980, p. 231, provided:

“Act No. 4439 (Bill No. 13–0103) [which amended this section and section 702 of this title], enacted May 23, 1980, is hereby made retroactive to January 1, 1980, and shall be deemed applicable and effective on that date.”

—**1972.** Act July 22, 1972, No. 3273, § 2, Sess. L. 1972, p. 228, provided:

“This Act [amending subsec. (e) of this section] shall become effective thirty (30) days after it shall become law [Approved July 22, 1972].”

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

Retroactive effective date

—**1974 amendment.** Section 4 of Act July 8, 1974, No. 3593, Sess. L. 1974, p. 190, provided: “The provisions of section 1 [which amended subsection (a) of this section] and 2 [which repealed subsections (c) and (e) and redesignated subsection (d) of this section] of this Act shall be retroactive to April 15, 1973”.

Retirement annuity preserved. Act May 23, 1980, No. 4439, § 1(b), Sess. L. 1980, p. 61, provided:

“No person shall, due to the passage of this act [which amended subsection (a) of this section], receive less retirement annuity than they would otherwise have been entitled.”

Increase in annuities or pensions—Generally. Act Dec. 30, 1994, No. 6064, § 1, Sess. L. 1994, p. 315, provided:

“Notwithstanding any other provision of law to the contrary, and in addition to any other increases granted by law, every person who is receiving an annuity or pension from the Government of the Virgin Islands, or who is receiving a special pension, regardless of when granted, from the Government of the Virgin Islands, and who retired prior to December 31, 1991, is granted an increase in benefits as follows:

“(a) Every person receiving an annuity or pension of \$700.00 or more per month is hereby granted an increase of 3%;

“(b) Every person receiving an annuity or pension of \$500.00 to \$699.99 per month is hereby granted an increase of 4%;

“(c) Every person receiving an annuity or pension of less than \$500.00 per month is hereby granted an increase of 6%;

“Any person receiving both a pension and an annuity pursuant to Title 3, Section 701, et seq. of the Virgin Islands Code, the Government Employees' Retirement System, and qualifying for an increase under this section, shall receive the increase in either their pension or annuity, whichever is larger, but not both.”

—**Retroactivity of increases.** Act Dec. 30, 1994, No. 6064, § 2, Sess. L. 1994, p. 315, provided that the increase in benefits granted pursuant to section 1 of the act, which is set out as a note above, shall be retroactive to October 1, 1994.

Increase in annuities or pensions—Generally. Act July 15, 1988, No. 5354, § 3, Sess. L. 1988, p. 186, provided:

“Notwithstanding any other provision of law, and in addition to any other increases granted by law, every person who is receiving an annuity or pension from the Government of the Virgin Islands, computed pursuant to the retirement law in existence prior to November 3, 1983, or who is receiving a special pension (regardless of when granted) from the Government of the Virgin Islands, and who retired prior to December 31, 1986, is granted an increase in benefits as follows:

“(a) Every person receiving an annuity or pension of \$500.00 or more per month is granted an increase of \$20.00 a month;

“(b) Every person receiving an annuity or pension of \$300.00 to \$499.99 per month is granted an increase of \$30.00 a month;

“(c) Every person receiving an annuity or pension of less than \$300.00 per month is granted an increase of \$40.00 a month; and

“(d) Any person receiving both a pension and an annuity pursuant to the Government Employees Retirement Law and qualifying for an increase under this section, shall receive the increase in either their pension or annuity, whichever is larger, but not both.”

—**Retroactivity of increases.** Act July 15, 1988, No. 5354, § 4, Sess. L. 1988, p. 187, provided that the increase in benefits granted pursuant to section 3 of the act, which is set out as a note above, shall be retroactive to December 1, 1987.

Limited period for electing early retirement option; rate of compensation; reduction of filled positions. Act Nov. 7, 1983, No. 4877, § 212, Sess. L. 1983, p. 223, as amended by Act Dec. 23, 1983, No. 4879, § 5, Sess. L. 1983, p. 250; Feb. 21, 1984, No. 4896, §§ 1, 2, Sess. L. 1984, p. 30, provided:

“(a) It is the purpose of this section [of this act] to provide a limited period in which members of the Government Employees Retirement System may elect, under certain conditions, to retire early from government service with increased benefits. It is the intention of the Legislature that these elected early retirements shall result in a reduction in the work force of the Government of the Virgin Islands.

“(b) Any member of the Government Employees Retirement System may elect to retire under the provisions of this section if the election and effective date of their retirement are made on or before February 29, 1984; Provided, however, That any such member who is an employee of the Department of Education and who reports directly or indirectly to the District Superintendent of Schools may, as an alternative, elect to retire under the provisions of this section if the election is made on or before February 29, 1984 and the effective date of his or her retirement is August 29, 1984.

“(c) Notwithstanding the provisions of Title 3, chapter 27, sections 705(d) and 706(a), Virgin Islands Code, a member qualifying to make an election under this section shall receive a service retirement annuity, payable semimonthly, computed at the rate of 3.0% of average compensation times the number of years credited service, not to exceed 40 years or computed at the rate of 2.5% of average compensation times the number of years of credited service plus 3 years of credited service, not to exceed 40 years, whichever is greater; such annuity shall not be reduced for early retirement, but shall be reduced pursuant to Title 3, chapter 27, section 707, Virgin Islands Code, if the member elects an option under section 707. Notwithstanding the provisions of Title 3, section 714, Virgin Islands Code, in order to fully effect the purpose of the Early Retirement Incentive provisions, and for the duration of the period of election under this section, any previous member of the Legislature who has earned credited service, as

a member of the Legislature, may elect to transfer such earned credited service as earned credited service pursuant to Title 3, section 704, Virgin Islands Code, and membership in the Retirement System pursuant to Title 3, section 703, Virgin Islands Code; provided the application was filed with the Retirement System on or before February 29, 1984.

“(d) The head of the executive, legislative, and judicial branches and the head of each independent instrumentality, independent board or agency of the Government of the Virgin Islands, which branch, instrumentality, board or agency is funded by an appropriation for personal services and fringe benefits in the fiscal year ending September 30, 1984, shall reduce the aggregate number of filled positions of the respective branch, instrumentality, board or agency by one permanent position for each employee of such branch, instrumentality, board or agency electing early retirement under this section.

“(e) Notwithstanding the 90 day limitation established under section 731(a) of Title 3, Virgin Islands Code, an employee who elects to retire under this section may also elect to have his entire accumulated and unused sick leave credited towards his service retirement annuity. The service credit shall be calculated in the same manner as set forth in section 731 of Title 3, Virgin Islands Code. However, a person who makes an election under this subsection is not entitled to any lump sum payment with respect to his accumulated and unused sick leave.”

Period for review of service retirement options by employees having previously elected early retirement option; election of other options. Act May 14, 1985, No. 5060, § 123, Sess. L. 1985, p. 37, provided:

“Any person who, as a member of the Government Employees Retirement System, elected to retire early from government service in accordance with the provisions of section 212 of Act No. 4877 (Bill No. 15-0650) [which is set out as a note above], enacted into law November 7, 1983, as amended, shall have sixty (60) days from the date of enactment of this act [May 14, 1985] to review the service retirement options available under Title 3, chapter 27 of the Code, including but not limited to the options relating to health and life insurance benefits. Said person may elect an option under Title 3, chapter 27 of the Code, notwithstanding any such election that may have been made at the time of the election to retire.”

ANNOTATIONS

1. Generally.
2. Re-employment.

1. Generally.

Legislature clearly intended that government employees taking advantage of early retirement provisions would leave the government payroll. 10 V.I.Op.A.G. 7.

2. Re-employment.

Re-employment for a period not to exceed 75 days, after retirement which is generally authorized by legislation, is not authorized in the case of employees who elected early retirement. 10 V.I.Op.A.G. 7.

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994); *Fuentes v. Fuentes*, 41 V.I. 86, 1999 V.I. LEXIS 25 (Terr. Ct. St. C. 1999).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706a. Limitation on compensation of retired contractual employees

§ 706a. Limitation on compensation of retired contractual employees

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706a. Limitation on compensation of retired contractual employees / Text

No retiree of the federal government, the Government of the United States Virgin Islands, or of the private sector shall be employed by the Government of the Virgin Islands on a contractual basis the compensation of which exceeds the highest rate of salary received by that employee before retirement and in any case such rate of compensation shall not exceed \$55,000 per year.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706a. Limitation on compensation of retired contractual employees / History

—Added Dec. 9, 1991, No. 5763, § 3, Sess. L. 1991, p. 271.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 706a. Limitation on compensation of retired contractual employees / Annotations

HISTORY

Revision note

—1995. Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” for purposes of clarity, pursuant to section 14 of Title 1.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 707. Options at retirement

§ 707. Options at retirement

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 707. Options at retirement / Text

(a) In lieu of the retirement allowance for his life alone, a member, but not a retired member, may elect, revoke, or change a previous elections, to have the actuarial equivalent of his retirement allowance as of the date of retirement applied to provide a lesser retirement allowance, in accordance with one of the optional settlements specified in this section.

(b) The election, revocation, or change of election may be made at any time before the effective date of retirement or after the effective date and prior to the making of the first payment

on account of any retirement allowance.

(c) If a member designates a spouse as the intended beneficiary, at any time before the making of the first payment on account of the member's retirement allowance, his spouse dies, or his marriage is terminated by a final judgment of divorce or annulment, the election of the member is automatically voided, and the member may make a new election.

(d) A member who has elected an optional settlement providing for the payment of a benefit to his spouse may, at any time before the making the first payment on account of his retirement allowance, substitute a different optional settlement. The election, revocation, or change of election must be executed in writing and filed with the Board. Any member electing an optional settlement must be advised of his options and status before and after making his election.

(e) A deceased member who is eligible for retirement who elected one of the optional settlements specified in this section, the surviving spouse of the member shall receive the same benefits as the surviving spouse would have received if the date of his death had also been the date of his retirement and if retirement had preceded death. In the event benefits are paid to a surviving spouse, no payment shall be made pursuant to this section.

(1) If a member dies without having elected an optional settlement and there is a surviving spouse, the member shall be deemed for the purposes of this paragraph to have elected Optional Settlement No. 2 as provided in subsection (h).

(2) In either case, the benefits payable to the surviving spouse must be in the same amount as if the member had elected to receive credit for service rendered prior to the date he became a member of this system and had paid the full amount of the contributions in respect to the service.

(f) Any election filed under this section prior to the effective date of the amendments to this section enacted by prior law continue to be effective in accordance with the terms of this section as it read prior to the amendments and may thereafter be revoked or changed or voided only in accordance with this section as it read prior to the amendments.

(g) A member may designate one or more person as beneficiary. If more than one beneficiary is designated under an optional settlement involving life contingency of a beneficiary, the member shall be deemed to have elected the optional settlement on an equal portion of his allowance independently for each beneficiary.

(h) The following options are available to members pursuant to this section:

(1) Optional Settlement 1 - The member has the right to have a retirement allowance paid to him until his death, and if he dies before he receives the amount of his accumulated contributions at retirement, to have the balance at death paid to his beneficiary or estate.

(2) Optional Settlement 2 - The member has the right to have a retirement allowance

paid to him until his death and thereafter to his beneficiary for life.

(3) Optional Settlement 3 - The member has the right to have a retirement allowance paid to him until his death, and thereafter to have one-half of his retirement allowance paid to his beneficiary for life.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 707. Options at retirement / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Apr. 23, 1970, No. 2700, § 6, Sess. L. 1970, p. 75; Nov. 2, 2005, No. 6794, § 5, Sess. L. 2005, p. 384.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 707. Options at retirement / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 5, rewrote the section.

—**1970.** Amended section generally.

Effective date of amendments

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 708. Duty disability annuity

§ 708. Duty disability annuity

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 708. Duty disability annuity / Text

(a) Any member who becomes totally and permanently incapacitated for service as the proximate result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, if such injuries or hazard were not the consequences of the wilful negligence of the member, shall receive a duty disability annuity; Provided, That application is made not more than six months after being advised that he is permanently and totally incapacitated for service if an accidental disability or six months after the occurrence of disablement if an occupational disease and proper proof is received from one or more physicians designated by the Board that such member is mentally or physically incapacitated; And

provided, further, That notice of the accident shall have been filed in the office of the board within 30 days next following the date of the accident; And provided, further, That in the case of members found pursuant to Title 3, section 584a, subsection (d) of this Code to be permanently disabled and unfit to perform their duties, application shall be made not more than three months after such determination is made pursuant to Title 3, section 584a, subsection (d) of this Code, and no prior notice of the accident to the office of the board shall be required.

(b) The duty disability annuity shall be payable during disability and shall be equal to 75 percent of the member's rate of compensation at date of disability in an amount not to exceed \$65,000 per annum. The annuity shall be offset by any amounts received by the member as workers' compensation administration from the employer.

(c) For the purpose of this section, "totally and permanently incapacitated" means inability to perform substantial gainful employment.

(d) The Board of Trustees may request earning information from recipients of disability annuities to verify disability claims. The recipient shall provide the earnings information to the Board of Trustees within 30 days of the date of the Board of Trustees request. If the recipient fails to provide the requested information within the prescribed time, the duty disability annuity must be discontinued until the requested information is provided. When the requested information is provided, the duty disability annuity must resume.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 708. Duty disability annuity / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Apr. 23, 1970, No. 2700, § 7, Sess. L. 1970, p. 76; Jan. 18, 1978, No. 4085, § 5, Sess. L. 1978, p. 8; Dec. 9, 1991, No. 5763, § 2(b)(2), Sess. L. 1991, p. 271; Oct. 13, 1994, No. 6033, § 2(b), Sess. L. 1994, p. 254; Nov. 2, 2005, No. 6794, § 6 1.-3., Sess. L. 2005, p. 386.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 708. Duty disability annuity / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 6, in subsection (a), substituted "after being advised that he is permanently and totally incapacitated for service" for "after the date of the accident" following "six months"; and added subsections (c) and (d).

—**1994.** Subsection (b): Substituted "workers' compensation administration" for "worker's compensation" following "member as" in the second sentence.

—**1991.** Subsection (b): Added “in an amount not to exceed \$65,000 per annum” at the end of the first sentence.

—**1978.** Subsection (a): Added last proviso relating to applications in the case of members found to be permanently disabled and unfit to perform their duties.

—**1970.** Subsection (b): Substituted “75 percent” for “60 percent” in the first sentence. Second sentence amended generally by offsetting annuity by any amounts received from workmen's compensation.

Effective date of amendments

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

ANNOTATIONS

1. Construction with other laws.
2. Commencement of filing period.

1. Construction with other laws.

Police officer who is retired as the result of a job related illness or injury, in addition to retirement benefits, is entitled to whatever total permanent disability benefits that may be available pursuant to Workmen's Compensation statutes. 9 V.I.Op.A.G. 40.

2. Commencement of filing period.

Just as a claim accrues under the Tort Claims Act from the time a plaintiff is aware of her injury and its cause, the six-month filing period for applications for retirement benefits commences at the time an applicant knows or reasonably should know the extent of her injuries and their permanent nature. *Government Employees Retirement Sys. v. Hill*, 31 V.I. 129, 866 F. Supp. 880, 1994 U.S. Dist. LEXIS 15553 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 709. Duty-connected death annuity

§ 709. Duty-connected death annuity

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 709. Duty-connected death annuity / Text

(a) Upon death of a member before retirement as the proximate result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, if such injuries or hazard were not the consequence of the wilful misconduct of the member, the surviving widow of the member shall be entitled to an annuity equal to 40 percent of the annual compensation of the member at the date of death of the member, to continue during her

widowhood. This annuity shall be increased by 10 percent of the member's compensation on account of each unmarried minor child under age 18, subject to a maximum payment to a widow and children of 60 percent of compensation. If there be no widow or if the widow dies or remarries before any child of such deceased member shall have attained the age of 18 years, then each child under said age shall receive an annuity of 10 percent of the member's compensation, to continue until each child attains age 18, subject to a limitation of 50 percent of compensation to all minor children. If there be no widow or children under age 18 then payment of annuity shall be made to the dependent father and dependent mother of the member, at the rate of 25 percent of compensation to each, for life, provided, that if none of the aforementioned beneficiaries is living at the death of the member, no duty-connected death annuity shall be paid under the provisions hereof.

(b) Adopted children shall be eligible for benefits hereunder provided the proceedings for adoption shall have been initiated at least one year prior to the date of death of the member.

(c) Where any payment under any section of this chapter is due a minor, or a person mentally incompetent or under other legal disability, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the Virgin Islands, or the place of residence of such claimant, or is otherwise legally vested with the care of the claimant or his estate; Provided, That where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the Virgin Islands or the place of residence of the claimant, payment may be made to any person who in the judgment of the Board of Trustees is responsible for the care of the claimant, and such payment shall be a bar to recovery to any other person.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 709. Duty-connected death annuity / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; May 18, 1961, No. 676, Sess. L. 1961, p. 30.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 709. Duty-connected death annuity / Annotations

HISTORY

Amendments

—1961. Subsection (c): Added.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710. Nonduty disability annuity

§ 710. Nonduty disability annuity

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710. Nonduty disability annuity / Text

(a) Any member under age 60 having at least 9 years of credited service who becomes totally and permanently disabled for service, either mentally or physically, from any cause other than duty disability shall be entitled to a nonduty disability annuity.

(b) Such annuity shall begin to accrue upon termination of payments to the employee by the Government of amounts representing full compensation, part compensation or any other form of compensation; Provided, That if written application for such annuity is not filed with the Board within 60 days of the date of termination of such compensation payments, the annuity shall begin to accrue as of the day 60 days prior to the receipt of such application.

(c) A member shall be considered totally and permanently disabled only after the board has received (1) written certification by at least two licensed and practicing physicians, selected by the Board, that the member is totally and likely to be permanently disabled for further performance of the duties of any assigned position in the service of the employer, and (2) written certification from the employer that the member has been separated from the service of the employer because of a total and permanent disability of such nature as to reasonably prevent further service for the employer, and as a consequence is not entitled to compensation from the employer.

(d) The amount of disability annuity shall be equal to 2 percent of average compensation for each year of credited service at date of disability, subject to a minimum of 20 percent of average compensation and a maximum of 60 percent of average compensation in an amount not to exceed \$65,000 per annum. Any payments by the employer representing salary or part salary shall be applied to reduce the amount of the annuity payable to the member.

(e) The recipient of a non-duty disability annuity shall provide earnings and medical information as requested by the Board of Trustees to verify disability claims. If the recipient fails to provide requested information, the non-duty disability annuity must be discontinued until the time as the requested information is provided. When the requested information is provided, the non-duty disability annuity resumes.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710. Nonduty disability annuity / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Mar. 29, 1962, No. 861, § 1, Sess. L. 1962, p. 107; May 22, 1967, No. 1987, § 6, Sess. L. 1967, p. 260; Apr. 23, 1970, No. 2700, § 8, Sess. L. 1970, p. 76; June 30, 1983, No. 4839, § 1, Sess. L. 1983, p. 101; Dec. 9,

1991, No. 5763, § 2(b)(3), Sess. L. 1991, p. 271; Nov. 2, 2005, No. 6794, § 7, Sess. L. 2005, p. 386.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710. Nonduty disability annuity / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 7, added subsection (e).

—**1991.** Subsection (d): Added “in an amount not to exceed \$65,000 per annum” at the end of the first sentence.

—**1983.** Subsection (d): Substituted “60” for “50” following “maximum of” in the first sentence and “2” for “1 ¼” preceding “percent of average compensation for each” and deleted “completed” thereafter in that sentence.

—**1970.** Subsection (a): Substituted “9 years” for “10 years”. Subsection (d): Substituted “1 ¼” for “one” percent and inserted the word “credited” preceding the word “service” in the first sentence. Second sentence amended generally by reducing annuity payments by any payments representing salary from the employer.

—**1967.** Subsection (a): Substituted “at least 10 years of credited service” for “at least 15 years of credited service”.

—**1962.** Subsection (a): Substituted “60” for “65”.

Effective date of amendments

—**1970.** Amendment of this section, by Act April 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

ANNOTATIONS

Cited. Cited in *Government Employees Retirement Sys. v. Hill*, 31 V.I. 129, 866 F. Supp. 880, 1994 U.S. Dist. LEXIS 15553 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710a. Committee of Medical Review

§ 710a. Committee of Medical Review

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710a. Committee of Medical Review / Text

(a) There is hereby created a Committee of Medical Review, to fulfill the requirements of Sections 708 and 710 of this chapter, and to assure fair and impartial evaluation of all claims for permanent disability retirement benefits. The Committee of Medical Review shall consist of at least three (3) and no more than seven (7) physicians who are licensed and Board certified. Each physician must be retained by contract. Any member of the Committee of Medical Review shall refrain from participation when it is clear that they may have a conflict of interest on a particular case. When a member recuses himself, the Committee shall conduct its work with a majority of the members of the committee. The Committee of Medical Review, its substitutes, and its employees may not be held personally liable for conclusions, advice, or recommendations made in accordance with the duties of the Committee of Medical Review. The substitutes shall serve at the pleasure of the Board of Trustees and shall be paid at a rate of compensation set by the Board of Trustees.

(b) The Committee of Medical Review shall:

- (1) review all reports and medical examinations required by this chapter;
- (2) investigate all essential health and medical statements and certificates filed in connection with an application for disability retirement benefits; and
- (3) submit to the Board of Trustees a written report of its conclusions and recommendations on all matters referred to it.

(c) The Board of Trustees shall, within 270 days of the enactment of this section, promulgate rules and regulations governing the administration of this section.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710a. Committee of Medical Review / History

—Added Nov. 2, 2005, No. 6794, § 8, Sess. L. 2005, p. 387; amended Dec. 29, 2006, No. 6905, § 5(4.), Sess. L. 2006, p. 334.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 710a. Committee of Medical Review / Annotations

HISTORY

Amendments

—2006. Act 6905, § 5(4.), rewrote subsection (a).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 711. Administration of disability annuities

§ 711. Administration of disability annuities

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 711. Administration of disability annuities / Text

(a) At least once each year during the first five years following the allowance of a disability annuity to any member, and at least once in every three-year period thereafter, until a member's attainment of age 55, the Board shall require any disability beneficiary to undergo a medical examination to be made at the place of residence of said beneficiary, or any other place mutually agreed upon, by a physician or physicians engaged by the Board. If an examination indicates that the beneficiary is no longer physically or mentally incapacitated for service in the position held by the member at the date of disability, payments by the system shall be discontinued. The name of such member shall then he placed on the appropriate list of candidates maintained for appointment to a position in the division for which he is found to be qualified at compensation at least equal to the rate he received at the time he last became a beneficiary.

(b) Should any member receiving a duty disability annuity or nonduty disability annuity resume a gainful occupation, and his earnings therefrom together with his disability annuity exceed the rate of compensation of the member at the date of retirement, the Board shall reduce the amount of disability annuity to an amount which, when added to the compensation being earned by the member, shall not exceed the rate of compensation of the member at the date he last became a disability beneficiary.

(c) Should any disability beneficiary refuse to submit to a medical examination as herein provided, payments by the system shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all rights of the member in any disability annuity shall be revoked by the Board.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 711. Administration of disability annuities / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 712. Death benefit provisions

§ 712. Death benefit provisions

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 712. Death benefit provisions / Text

Death while in service

(a) Upon death of a member while in service, if no duty-connected death annuity is payable, a payment of the accumulated contributions of the member shall be payable.

(b) Upon the death of a member while in service, not enrolled in the Government's Health Insurance Program, if no duty-connected death annuity is payable, a payment of the accumulated contributions of the member plus the following in lump sum shall be payable:

[Click to view table.](#)

Death after retirement

(c) Upon death of a retired member, unless an optional benefit has been elected as provided in section 707 of this title, a lump-sum payment equal to the excess of the annual salary of the member at the date of retirement as defined in section 702(a) of this title, plus the member's total contributions, over the amounts received by the member in annuity payments up to the time of his death, and if the member is enrolled in the Government's Health Insurance Program the Life Insurance Benefits of \$5,000, shall be paid to the designated beneficiary of the member.

Designation of beneficiary's payment in absence of designation

(d) The death benefit payments as provided under subsections (a), (b) and (c) of this section shall be payable to a beneficiary designated by the member. In the absence of such designation, the death benefit payments provided under subsections (a), (b) and (c) of this section shall be payable to a beneficiary of the member in the following order of precedence:

(1) The surviving spouse

(2) If there is no surviving spouse, to the child or children, and descendants of children by representation, in equal amounts

(3) The parents of the member

(4) Where none of the above-named survive, the member's estate shall only be entitled to receive payment of the excess of the member's accumulated contributions over the amount of annuity payment received by the member up to the time of his death.

(e) Upon death of a member occurring while in service, the deceased member's surviving spouse shall be entitled to a payment of the accumulated contributions of the member. The accumulated contributions of the deceased are not payable to a surviving spouse who is entitled to a duty-connected death annuity. If there is no surviving spouse, the death benefit as provided

in subsections (a) and (b), whichever is applicable, is payable.

(f) Upon the death of a member who is a police officer in the employ of the U.S. Virgin Islands Police Department (V.I.P.D.), a firefighter in the Virgin Islands Fire Service or in the Port Authority Fire Service, a Corrections Officer employed by the Bureau of Corrections, a Marshal of the Superior Court, an Enforcement Officer of the Department of Planning and Natural Resources, or any agent of the Virgin Islands Drug Enforcement Bureau, who is killed in the performance of his official duty, whether or not such officer was officially on duty at the time of the incident which was the cause of the death, the mortuary service which prepares the body for burial or interment or renders any other services connected with the death, shall receive reimbursement, not to exceed \$5,000, from the Government of the United States Virgin Islands for actual expenses incurred.

(1) Within three working days of the death of an employee covered under this subsection the head of the Department or Agency in which the person was employed, or his designee, shall certify the death to the Commissioner of Finance and shall deliver to the Commissioner of Finance a copy of the death certificate and an itemized accounting of mortuary or other services rendered.

(2) The Commissioner of Finance shall reimburse the mortuary service for actual expenses incurred, not to exceed \$5,000, within two weeks of the date of receipt of the documents delivered to him pursuant to paragraph (1) of this subsection.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 712. Death benefit provisions / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Mar. 29, 1962, No. 861, § 3, Sess. L. 1962, p. 107; June 15, 1962, No. 893, Sess. L. 1962, p. 177; May 22, 1967, No. 1987, § 7A, B, Sess. L. 1967, p. 261; Apr. 23, 1970, No. 2700, § 9, Sess. L. 1970, p. 77; Feb. 8, 1973, No. 3372, Sess. L. 1972, p. 566; Apr. 18, 1977, No. 3958, Sess. L. 1977, p. 34; May 28, 1981, No. 4558, § 1, Sess. L. 1981, p. 53; Mar. 31, 1982, No. 4689, § 9(a), Sess. L. 1982, p. 52; Nov. 3, 1983, No. 4864, § 7, Sess. L. 1983, p. 198; June 24, 1984, No. 4964, § 1(b), Sess. L. 1984, p. 177; Mar. 5, 2005, No. 6730, § 23, Sess. L. 2005, p. 106; Nov. 2, 2005, No. 6794, § 9 1., 2., Sess. L. 2005, pp. 387, 388.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 712. Death benefit provisions / Annotations

HISTORY

Revision note

—1995. Substituted “Department of Planning and Natural Resources” for “Department of

Conservation and Cultural Affairs” in subsection (f) in light of Act June 24, 1987, No. 5265, § 301, Sess. L. 1987, p. 41, and section 407 of this title, pursuant to section 14 of Title 1.

Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsection (f) for purposes of clarity, pursuant to section 14 of Title 1.

References in text. “[S]ection 702(a) of this title” as referenced in this section pertains to the definition of “System”.

“[S]ection 707(a) of this title” as referenced in this section pertains to options at retirement. Section 707 of this title, as amended by Act Apr. 23, 1970, No. 2700, § 6, Sess. L. 1970, p. 75, deleted the designations of subsections (a) and (b) for the second and third paragraphs and replaced them with the designations “Option 1.” and “Option 2.”

Amendments

—**2005.** Act 6730, § 23, substituted “Virgin Islands Drug Enforcement Bureau” for “Narcotics Strike Force” in subsection (f).

Act 6794, § 9, rewrote subsections (a) and (e); in subsection (d), inserted a period after the first occurrence of the word “member” and deleted “provided such beneficiary has an insurable interest in the life of the member.”

—**1984.** Subsection (f): Substituted “U.S. Virgin Islands Police Department (V.I.P.D.)” for “Department of Public Safety” near the beginning of the introductory paragraph.

—**1983.** Subsection (c): Substituted “\$5,000” for “\$2,500” preceding “shall”.

—**1982.** Subsection (f): Substituted “\$5,000” for “\$2,500” following “not to exceed” in the first undesignated paragraph and in paragraph (2). Subsection (f)(2): Substituted “\$5,000” for “\$2,500” following “not to exceed”.

—**1981.** Subsection (f): Added.

—**1977.** Amended to provide for death benefits under the retirement system.

—**1973.** Subsection (a): Substituted the word “no” for “an” preceding the word annuity in the second clause of the first sentence.

—**1970.** Subsection (a): In opening phrase substituted “an annuity” for “no annuity” and increased rate used for computing death benefits limitations from “\$7,500” to “\$10,000” in second column of tables.

—**1967.** Subsection (a): Substituted “if no annuity of any kind is payable under this chapter” for “if no duty-connected death annuity is payable”; added “provided that the rate of such compensation to be used for purposes of computing this death benefit payment shall not exceed \$7,500 per year” and deleted “as defined in section 702(n) of this title” in second column of table for member having less than 5 years credited service and also for a member having more than 5 but less than 10 years credited service; added “not to exceed \$7,500” and deleted “as defined in section 702(n) of this title” in second column of table for member having 10 years or more of credited service. Subsection (d): Added.

—**1962.** Subsection (a): Substituted provisions for lump-sum payments based on length of service for provisions establishing the order of precedence in payments to beneficiaries in absence of beneficiary designation, the latter provisions now being covered by subsection (c). Subsection (b): Amended generally. Subsection (c): Included provisions similar to subsections (a) and (b), and the provision

preceding item (1) into two separated sentences, and, to the first of such sentences, added the two provisos relating to insurable interest of the beneficiary in the life of the member, and to entitlement of designated beneficiary only to refund of member's accumulated contribution, if no such insurable interest exists.

Effective date of amendments

—**1984.** Act June 15, 1984, No. 4964, § 1(c), Sess. L. 1984, p. 177, provided that the change of name of the Department of Public Safety shall become effective Jan. 1, 1985.

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

Retroactive effect of 1981 amendment. Act July 7, 1981, No. 4575, § 6, Sess. L. 1981, p. 72, provided:

“(b) This section 1 of this act [which added subsec. (f) to this section] shall be retroactive to and effective from December 1, 1980.”

ANNOTATIONS

1. Prior law.
2. Generally.

1. Prior law.

The widow of a St. Croix municipal employee who died before reaching retirement was entitled to a percentage of the money which had been deducted from his salary for retirement, notwithstanding that the retirement ordinance did not anticipate such a situation. 3 V.I.Op.A.G. 212.

Under section 12(a) of Bill No. 36 of the Municipality of St. Croix, the order of priority in the event of the death of an active or retired salaried employee was fixed at spouse married prior to retirement, and if none, the employee's minor children, and if none, any other direct relative totally dependent on the employee; 80 percent of the annuity was to be paid annually and only one category could participate at a given time. 3 V.I.Op.A.G. 199.

The beneficiary of a former government employee who was an annuitant under the Retirement Ordinance was entitled to: (a) contributions by the annuitant in excess of amounts paid to the annuitant during his lifetime; and (b) any accrued annuity, which should be deducted from the annuitant's contributions for purposes of computing the amount remaining to his credit. 2 V.I.Op.A.G. 266.

A beneficiary designation form suggested by the Commissioner of Finance was proper, since both the retirement system ordinance and the accrued leave ordinance provided for payment to named beneficiaries of monies standing to the credit of municipal employees upon their death. 2 V.I.Op.A.G. 235.

2. Generally.

Where government employee left her contributions in Employees Retirement System upon leaving employment, became reemployed sometime later with the government and again became a member of the System, and died, she was eligible for duty and death benefits and her properly designated beneficiary was entitled to receive the death benefits. 8 V.I.Op.A.G. 15.

The beneficiary of a member of the government employees retirement system who terminated active service, elected to receive deferred service retirement annuity and died not having received any benefits due to age would be entitled to a lump-sum payment of the total accumulated contributions. 8 V.I.Op.A.G. 78.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 713. Refunds

§ 713. Refunds

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 713. Refunds / Text

(a) Upon withdrawal from service, any member who is not then eligible for a service retirement annuity shall be entitled to receive a refund of the accumulated contributions, plus regular interest, including contributions made by the member to any superseded retirement system. Any member withdrawing from service who does not receive a refund and later returns to service shall receive credit for the amount of credited service in force at the time of his withdrawal from service. Any member receiving a refund shall thereby waive and relinquish all accrued rights in the system including all accrued credited service. The Board may, in its discretion, withhold payment of a refund for a period not to exceed one year after receipt of an application from a member. If no specific request to the contrary is made by a member within 30 days from the date of his separation from the service, the Board may, in its discretion, refund the accumulated contributions of any member who has less than 3 years of credited service; notwithstanding that such member may not have applied for a refund.

(b) Any member who has received a refund shall be considered a new member upon subsequent reemployment if such person qualifies for membership under the provisions hereof. Additionally, the member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, the income the system would have earned had those contributions remained in the system, and the interest on the unpaid balance, if the member elects to redeposit on an installment basis, provided the payments do not exceed a period of five consecutive years.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 713. Refunds / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Mar. 29, 1962, No. 861, § 3, Sess. L. 1962, p. 107; May 22, 1967, No. 1987, § 9A, B, Sess. L. 1967, p. 262; Dec. 28, 1973, No. 3512, § 1, Sess. L. 1973, p. 306; June 30, 2000, No. 6353, § 10, Sess. L. 2000, p. 84; Nov. 2, 2005, No. 6794, § 10 1., 2., Sess. L. 2005, p. 388.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 713. Refunds / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 10, inserted a comma after the first occurrence of the word “contributions”, and substituted “plus regular interest” for “plus four percent (4%) interest”; in subsection (b), substituted “Additionally, the member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, the income the system would have earned had those contributions remained in the system, and the interest on the unpaid balance, if the member elects to redeposit on an installment basis, provided the payments do not exceed a period of five consecutive years” for the former second and third sentences, which read “Such member, upon the repayment of all refunds received of contributions made under the present system and predecessor systems shall have reinstated to his account all service credit represented by the refunds of which repayment was made. An employee who takes advantage of the provisions of this subsection shall be permitted to make the contributions over a period of time, not to exceed 5 years, beginning at such time that the employee's eligibility to make such repayment has been determined; Provided, That the entire repayment is made prior to the employee's retirement.”

—**2000.** Subsection (a): Inserted “plus four percent (4%) interest” following the first instance of “contributions” in the first sentence.

—**1973.** Subsection (a): In the first sentence added the word “then” preceding the words “eligible for a service retirement annuity” and omitted the proviso which prohibited refunding under certain conditions.

—**1967.** Subsection (a): Added proviso in first sentence. Subsection (b): Amended generally.

—**1962.** Subsection (a): Added provision for discretionary refund by Board to withdrawn member, of less than 3 years' service, who makes no request to the contrary within 30 days from date of separation.

Effective date of amendments

—**1967.** Act May 22, 1967, No. 1987, § 9C, Sess. L. 1967, p. 262, provided that amendment of subsection (b) of this section by such Act shall be effective retroactively to October 1, 1959, the date of establishment of the present system.

Effective date; application to qualified persons. Act Dec. 28, 1973, No. 3512, § 2, Sess. L. 1973, p. 306, provided:

“The provisions of section 1 of this Act [which amended the first sentence of subsec. (a) of this section] shall be effective for and apply to all qualified persons, whether the necessary qualifications were acquired or accrued before or after the effective date hereof; provided, that this section shall not apply to any person receiving or qualified to receive a service retirement annuity on the effective date hereof.”

ANNOTATIONS

1. Generally.

2. Resignations.

1. Generally.

A municipal employee retains an equitable interest in money withheld from his salary for retirement benefits. 3 V.I.Op.A.G. 212.

2. Resignations.

A municipal employee who resigned was not entitled to sums paid into Retirement Fund on his behalf by the municipality. 1 V.I.Op.A.G. 307.

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 714. Coverage of members of the Legislature

§ 714. Coverage of members of the Legislature

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 714. Coverage of members of the Legislature / Text

(a) Membership in the system for members of the Legislature shall be optional. Each member in service on July 1, 1970, and who is not then a member of the system by previous election, may obtain coverage in the system by filing an application within twelve (12) months from such date, on a form provided by the Administrator. Salary deductions for new members of the system, at the rate prescribed herein, shall begin from the first payroll period following the filing of the application with the Administrator and credited service as a member of the system shall begin to accrue. Any such new member who desires credit for service rendered as a member of the Legislature shall contribute to the system the amount of contribution in effect during such prior service not later than June 30, 1971.

(b) Each person who becomes a member of the Legislature after July 1, 1970, and who is then not a participant by previous election, shall automatically become a member of the system and be subject to salary deductions hereunder unless, within 90 days from the date he becomes a member of the Legislature, he filed with the Administrator a written notice of election not to participate.

(c) Participation in the system on the part of any member of the Legislature shall continue until the date he becomes an annuitant, dies or accepts a refund of his contributions thereto.

Notwithstanding the provisions of this chapter, proportionate contributions shall be made by each member of the Legislature who has completed ten (10) years of service if the member elects to receive pension credit for any period for which such member was not covered by the system, provided, however, that such proportionate contributions are made retroactively for the

respective period of service.

(d) The rate of contribution to the system on the part of a member of the Legislature who becomes a member of the system shall be 9 percent of his annual salary. This rate shall apply to service rendered beginning January 9, 1989. For purposes of this chapter, service as a member of the Legislature during any part of a calendar year shall be deemed to be a year of credited service; Provided, That contributions are made for the full calendar year.

(e) The conditions governing eligibility for service retirement for any member of the Legislature and the amount of the annuity shall be as stated in this section, all other provisions of this chapter notwithstanding.

Vesting in a service retirement annuity shall attach upon completion of 6 years of credited service. Any such member shall be eligible for service retirement beginning at age 50 on a service retirement annuity equal to the rate set forth in the following schedule:

1. For each year of credited service during the first 6 years—2 ½ percent of compensation;

2. For each year of credited service from 7 to 12 years inclusive—3 percent of compensation;

3. For each year of credited service above 12 years—4 percent of compensation;

provided that the maximum service retirement annuity of 75 percent of compensation shall, in any event, be payable upon completion of twenty years of credited service, whether or not such member has reached age 50. For purposes of this subsection, the term “compensation” shall mean the highest rate of salary, as established by section 71 pursuant to the provisions of section 73 of Title 2, Virgin Islands Code, received by that member during his tenure as a member of the Legislature and shall increase only as provided under this chapter.

(f) In the case of any member of the Legislature who shall become separated from the service before he completed an aggregate of 6 years of service as a member of the Legislature, the total amount paid by such member of the Legislature shall, upon his application, be returned to him or such legislative service shall be credited to the member's service as provided by Title 3, section 704, subsection (k), Virgin Islands Code. No such member of the Legislature shall thereafter receive credit for such service unless he again becomes a member of the Legislature and redeposits the amount so returned.

(g) (1) Nothing contained in this chapter shall be construed to prevent any person eligible therefor from simultaneously receiving an annuity computed on the basis of years of service other than as a member of the Legislature and an annuity computed in accordance with this section; nor shall anything contained in this chapter be construed to prevent a member of the Legislature from receiving, while serving in the Legislature, an annuity for nonlegislative

service.

(2) Nothing contained in this chapter shall prevent any person elected as a member by the Legislature of the Virgin Islands from simultaneously receiving an annuity under this section while so employed; nor shall anything in this chapter prevent any elected member from receiving a pension from the government of the United States Virgin Islands while receiving an annuity under this section.

(h) No provision of this chapter or any other Act relating to automatic separation from the service shall be applicable to a member of the Legislature.

(i) As used in this section, the term “Legislature” means the Legislature of the Virgin Islands, and the previous Legislative Assembly of the Virgin Islands and the previous Municipal Councils of the Municipality of Saint Thomas and Saint John and the Municipality of Saint Croix. Notwithstanding any other provision of this title, any member of the Legislature Assembly or a Municipal Council may obtain credit for such service by contributing to the system an amount equal to \$100 for each year of service as a member of the Legislative Assembly or a Municipal Council.

(j) In no case shall service other than as a member of the Legislature be considered service for the purposes of this section, nor shall service as a member of the Legislature be considered service for any purpose other than as specified in this section.

(k) The provisions of this section with respect to conditions governing membership in the system, rates of contribution, conditions for retirement and rates of annuity, as prescribed by this amendatory act of 1970, shall apply fully to all membership of the Legislature in service on July 1, 1970, and to those who become members of the Legislature thereafter. All other sections of this chapter to the extent that they confer additional rights or benefits in the system to participants therein, shall apply with equal force to members of the Legislature who are members of the system to the same extent as in the case of all other employee participants and their beneficiaries, and other provisions of this chapter to the contrary notwithstanding.

(l) [Repealed.]

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 714. Coverage of members of the Legislature / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Jan. 25, 1960, No. 524, Sess. L. 1960, p. 18; Mar. 18, 1963, No. 970, §§ 1, 2, Sess. L. 1963, p. 184; Apr. 21, 1965, No. 1438, Sess. L. 1965, Pt. I, p. 201; May 22, 1967, No. 1987, § 10, Sess. L. 1967, p. 262; Apr. 23, 1970, No. 2700, § 10, Sess. L. 1970, p. 77; Feb. 12, 1971, No. 2936, Sess. L. 1970, p. 427; Dec. 6, 1972, No. 3345, Sess. L. 1972, p. 519; July 2, 1973, No. 3455, § 1, Sess. L. 1973, p. 158; Dec. 27, 1983, No. 4882, § 7(c), Sess. L. 1983, p. 259; Feb. 1, 1985, No. 5039, § 2(a)(1), (b), Sess. L. 1984, p. 462; July 17, 1989, No. 5424, § 5(a)–(c), Sess. L. 1989, p. 23; Apr. 6, 1990, No. 5540, §

2, Sess. L. 1990, p. 170; Dec. 9, 1991, No. 5763, § 1, Sess. L. 1991, p. 271; May 20, 1994, No. 5979, § 2(a), Sess. L. 1994, p. 70; Sept. 25, 2001, No. 6430, § 2, Sess. L. 2001, p. 188.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 714. Coverage of members of the Legislature / Annotations

HISTORY

Revision note

—**1995.** Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsection (a) for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—**2001.** Act 6430 substituted “75” for “65” in the first sentence of the undesignated paragraph in subsection (e); in subsection (g), deleted the former last sentence which read “No person, however, employed by the Government of the Virgin Islands, other than on a contractual basis, shall receive an annuity under this section while so employed; nor shall any person receiving a pension from the Government of the Virgin Islands receive an annuity under this section; Provided, however, That such person shall have the right to elect to receive the pension or the annuity,” redesignated the remaining language of the subsection as subsection (g)(1), and added subsection (g)(2).

—**1994.** Subsection (c): Rewrote the second paragraph.

—**1991.** Subsection (e): Inserted “highest” preceding “rate”, deleted “or” preceding “pursuant” and substituted “that member during his tenure as a member of the Legislature and shall increase only as provided under this chapter” for “members of the Legislature on the date each installment of the annuity is paid” following “received by” in the last sentence.

—**1990.** Subsection (d): Substituted “9” for “7 ½” in the first sentence.

—**1989.** Subsection (d): Rewrote the first sentence and substituted “January 9, 1989” for “July 1, 1970” in the second sentence. Subsection (e): Deleted “and notwithstanding the provisions of subsection (l) of this section” preceding “the term” in the third sentence of the second paragraph. Subsection (l): Repealed.

—**1984.** Subsection (e): Substituted “rate of salary, as established by section 71 or pursuant to the provisions of section 73 of Title 2, Virgin Islands Code” for “compensation” preceding “received” and inserted “each installment of” preceding “the annuity” in the fourth sentence. Subsection (f): Added “or such legislative service shall be credited to the member's service as provided by Title 3, section 704, subsection (k), Virgin Islands Code” following “him” in the first sentence.

—**1983.** Subsection (e): Added the last sentence.

—**1973.** Subsection (e): Added the words “whether or not such member has reached age 50” in the proviso following item 3.

—**1972.** Subsection (i): Added new sentence to include coverage of members of the Legislature Assembly and Municipal Council in government retirement system.

—**1971.** Subsection (a): Provided for election within 12 months and changed date for payment for prior service to June 30, 1971. Subsection (d): Substituted reference to “subsection (l)” for “subdivision (1)” and added proviso. Subsection (l): Rephrased and substituted “average” compensation for “annual” compensation.

—**1970.** Amended section generally.

—**1967.** Subsection (d): Substituted “\$12,000” for “\$7,500”.

—**1965.** Subsection (e): Added last three sentences, providing, respectively, for (1) computation of annuities for service of not less than 10 years; (2) maintenance of status quo of annuities to persons retired prior to April 21, 1965; and (3) an annuity of \$1,875 per annum for service of at least 10 years and attained age of 50 years, subject to increase of 1/120 for each month or fraction thereof that period of service is more than 10 years.

—**1963.** Subsection (e): Added the provisos relating to service of 20 years or more and service of not less than 15 years. Subsection (g): In second sentence, inserted, after “Government of the Virgin Islands,” the phrase “other than on a contractual basis.”

—**1960.** Subsection (c): Deleted after the second reference to “Legislature” preceding the semicolon, the phrase “or in any other department, division, or agency of the employer, except such service as excluded by section 703(c) of this title”; and substituted “January 25, 1960” for “date of establishment”. Subsection (d): Amended generally. Subsections (e), (f) and (g): Added. Former subsections (e), (f) and (g) were redesignated (h), (i) and (k), respectively. Subsections (h) and (i): Former subsections (e) and (f), respectively, redesignated (h) and (i). Subsection (j): Added. Subsection (k): Former subsection (g), redesignated (k) and amended generally.

Effective date of amendments

—**1990 amendment.** Act Apr. 6, 1990, No. 5540, § 2, Sess. L. 1990, p. 170, provided in part that section 2 of the act, which amended subsection (d) of this section, shall take effect Apr. 1, 1990.

—**1984 amendment.** Act Feb. 1, 1985, No. 5039, § 2(a)(2), Sess. L. 1984, p. 462, provided:

“The effective date of this subsection [which amended subsection (e) of this section] shall be retroactive to December 27, 1983.”

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

Retroactive effect of 1973 amendment. Act July 2, 1973, No. 3455, § 2, provided:

“The provisions of this Act [amending proviso following item 3 of subsection (e)] shall be retroactive to January 1, 1973.”

ANNOTATIONS

1. Participation in prior system.
2. Time for payments.

1. Participation in prior system.

Person who could have participated in and received benefits under prior retirement benefits system but did not do so was not entitled to participate in succeeding retirement benefits system, under which his benefits would be much higher. 7 V.I.Op.A.G. 143.

2. Time for payments.

Former legislator who had completed 20 years of credited service, upon termination, was not entitled to receive annuity payments where he was less than 50 years of age. 7 V.I.Op.A.G. 116.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 715. GERS; Board of Trustees; duties and responsibilities

§ 715. GERS; Board of Trustees; duties and responsibilities

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 715. GERS; Board of Trustees; duties and responsibilities / Text

(a) The Virgin Islands Government Employees Retirement System is established as an independent and separate agency of the Government of the United States Virgin Islands. The responsibility for the proper operation of the System and for making effective the provisions of this chapter is vested in the Board of Trustees. The Board of Trustees shall be composed of seven members who shall be appointed by the Governor with the advice and consent of the Legislature. Two members shall be appointed from a group of at least six persons who are members of the Central Labor Council, active members of the Government Employees Retirement System, and who have been recommended by the Executive Committee of the Central Labor Council. One such appointee shall be a resident of the District of St. Croix and one such appointee shall be a resident of the District of St. Thomas-St. John. Of the remaining five members, two shall be a retiree of the Government Employees Retirement System, elected through a process to be determined and conducted by the system, and at least one shall be an active member of the Government Employees Retirement System; provided that two such appointees shall be residents of the District of St. Croix, two such appointees shall be residents of the island of St. Thomas and one shall be a resident of the island of St. John. Each member shall serve a term of five years. No member may serve more than two complete terms. Any vacancy shall be filled in the manner of the original appointment for the unexpired term. Notwithstanding the date on which any member's term expires, all members shall serve until their successors are appointed and approved. The Governor shall designate one of the members to serve as Temporary Chairman, whose sole responsibility shall be to call the first meeting of the Board. Members may be removed for cause. Notwithstanding section 65a, of this chapter, members whose terms have expired shall continue to serve until their successor is nominated by the Governor and confirmed by the Legislature of the Virgin Islands. All members of the Board of Trustees, who are employees of the Government of the United States Virgin Islands or of any of its instrumentalities, shall be automatically granted administrative leave to attend Board

meetings or whenever they are in the process of conducting any official business of the Board of Trustees as designated by the chairperson of the Board.

(1) Each trustee shall take an oath of office that so far as it rests upon him he will diligently and honestly administer the affairs of the System, and that he will not knowingly violate or willfully permit to be violated any of the provisions of law applicable to the System. Such oath shall be subscribed by the trustee taking it, and certified by the officer before whom it is taken, and immediately filed with the Lieutenant Governor. Appointed members shall receive \$75 for each day or part thereof spent in work of the Board, but no member shall receive more than \$5,000 in any fiscal year. Trustees shall also be reimbursed by the System for all necessary expenses that they may incur through service on the Board. Appointed government members may elect to receive the remunerations as provided for in this subsection or any other remuneration to which they would otherwise be entitled for working on the Board.

(2) With the exception of the two members from the Central Labor Council, members of the Board of Trustees shall have at least five years experience and a[t] least a bachelor's degree in any of the following: investment banking; economics; finance; insurance; law; medicine; accounting; actuarial science; taxation; real estate appraisal or brokerage and securities trading.

(b) For making effective the provisions of this chapter, the Board shall adopt rules and regulations to govern its internal organization and functioning and shall approve and cause to be promulgated from time to time such other regulations as the Administrator may require for the proper and efficient administration of the System according to the law.

The Board shall have, in addition to the duties arising out of this chapter, the following powers and duties; namely, to:

(1) Hold regular meetings, at least quarterly each year, and such special meetings as may be deemed necessary. All meetings shall be open to the public. The Board shall keep a full record of all its proceedings;

(2) Consider and adopt resolutions on matters referred to it by the Administrator in connection with changes in policy and revisions of this chapter;

(3) Authorize the purchase and sale of investments by the System as may be proposed by the Administrator;

(4) Investigate and decide on appeal at the request of any member, decisions of the Administrator except those relating to classification or allocation of positions as provided under section 496 of this chapter or relating to discrimination under sections 523 and 531 of this chapter or relating to dismissals, demotions, and suspensions under section 530 of this chapter;

(5) Not later than four months following the close of each fiscal year, the Board shall transmit to the Governor and the Legislature an Annual Report on the operations of the System

containing, among other things, a balance sheet on the financial condition of the System, a statement of income and expenditures for the year, a report on the most recent actuarial valuation of its assets and liabilities of no later date than three years prior to the time of the report, a detailed statement of the investments acquired and disposed of during the year, a list of investments owned; and other statistical and financial data which may be necessary for a proper understanding of the financial condition of the System and the result of its operations. The Board shall cause to be published in a Virgin Islands newspaper of general circulation a summary of the Annual Report, authorized under this paragraph for the benefit of the members of the System;

(6) Make contracts, including contracts for professional and legal services, and sue and be sued under the name and style of the Government Employees Retirement System of the Government of the United States Virgin Islands;

(7) Prescribe the policies for the proper operation of the System and carry on any other reasonable activities which are deemed necessary to effectuate the intents and purposes of the System in accordance with the provisions of this chapter. No member of the Board of Trustees may, during any process involving the request for proposals or the selection of any vendor or contractor for goods or services by the board, communicate concerning any matter relating to the request for proposals or selection with any applicant or bidder, or an officer or employee of any applicant or bidder, outside of the application or bidding process. This section applies to investment products, including but not limited to, bonds, real estate, and stocks;

(8) Recommend to the Governor and the Legislature not less than biennially an adjustment in benefits for all annuitants and pensioners based on a review of cost-of-living and related economic factors and consistent with actuarial projections on the solvency of the System;

(9) Deposit funds in banking institutions that are members of the Federal Deposit Insurance Corporation;

(10) The Board shall annually retain a nationally recognized Certified Public Accountant, with experience in pension and trust accounting, to audit the financial statements of the system. The term for which the Board may contract to employ a Certified Public Accountant may not exceed five years, nor may the Board contract the same person or entity for more than two consecutive five-year terms; and

(11) Accept, receive, deposit, control, invest, and manage appropriations, gifts, devises, bequests, or contributions regardless of the source thereof, on behalf of the system.

(c) The Board of Trustees shall appoint, with the advice and consent of the Legislature, the Administrator of the Government Employees Retirement System, who shall be in charge of the detailed affairs of the System. The Board of Trustees may also appoint as many Assistant Administrators as it deems necessary. The Administrator shall administer the business of the System and be responsible for its proper operation, subject to the orders, resolutions, and directives of the Board. He may employ such clerical, professional and technical support

services as the Board may determine necessary for the proper operation of the System.

(1) Exempt employees of the Government Employees Retirement System may not be terminated or suspended except for cause.

(2) Any exempt employee whose termination or suspension is recommended must be informed in writing. Within ten days after being served notice of termination or suspension, the employee shall have the opportunity to appeal the decision of the Administrator to the Board of Trustees. After considering the evidence presented by the Administrator and the employee, the Board of Trustees may affirm or reverse the recommendation of termination or suspension of the employee.

(3) Any exempt employee served with a notice of termination or suspension is entitled to a hearing before the Board of Trustees and may be represented by counsel.

(4) If the Board of Trustees affirms the recommendation of termination or suspension, the employee may file a writ of review in the Superior Court of the Virgin Islands within 30 days of the Board of Trustees' decision.

(5) If the Superior Court determines that there existed no cause for termination or suspension of the employee and it orders that the employee be reinstated, the employee shall be paid all wages and benefits that he would have received while awaiting the decision of the Superior Court.

(6) Any employee reinstated by the Superior Court is entitled to receive reasonable attorney fees and costs incurred.

(d) The Administrator shall have, in addition to the foregoing authority, the following powers and duties, to:

(1) Establish an office for the Government Employees Retirement System and provide for a complete and adequate system of accounts and records as may be required for the effectuation of the provisions of this chapter;

(2) With the advice of a technical advisor, adopt the required actuarial tables and compile the statistical data necessary for periodic actuarial valuations and surveys of the operations of the system;

(3) Attend all meetings of the Board and carry out the resolutions and directives of the Board;

(4) Certify to the Department of Finance the payments to be made according to the provisions of this chapter;

(5) Remit or deposit in the name of the Government Employees Retirement System of

the Government of the United States Virgin Islands all moneys received for the account of the System and render an accounting according to the law and the rules and regulations in force;

(6) Formulate rules and regulations to govern the operation of the System for presentation to the Board for its approval;

(7) Make recommendations to the Board for the investment or reinvestment of funds of the System, and on any change or revisions in the provisions of this chapter;

(8) Prepare the Annual Report on the operations of the System and submit the same to the Board for its approval and to the Governor and the Legislature for their information;

(9) Issue a statement of accounts showing the amount of a member's contributions to the System within 30 days of the date of a request of such member;

(10) Render any reports to the Board that it may request in connection with the operations of the System; and

(11) Issue to each retiring member and the Virgin Islands Bureau of Internal Revenue a statement of the amount of the retiring member's retirement contributions.

(e) Nothing in this chapter shall be construed as exempting the Board of Trustees or the Government Employees Retirement System of the Government of the United States Virgin Islands from any law made specifically applicable thereto or generally applicable to independent instrumentalities of the Government of the United States Virgin Islands, whether such law was enacted before, on or after the date of enactment of this section.

(f) The Board shall sit as a panel from time to time, but not less than once monthly, to hear suggestions of retired government employees on improvements to the System and decide grievances of retired Government employees. Whenever possible, the Board shall remedy the grievance in an equitable manner.

(g) In addition to the powers conferred in this section, the Board is granted, shall have and may exercise all rights and powers necessary to carry out the following provisions;

(1) To sell, exchange, transfer, assign, mortgage, pledge or otherwise dispose of, or encumber, any real or personal property, or any interest or estate in the property; provided that no provision of law with respect to the acquisition, operation or disposition of property by other public agencies shall be applicable to the system unless the Legislature shall specifically exempt or restrict property from this paragraph or shall otherwise so provide; provided further, that except for a sale resulting from mortgage foreclosure, in no case shall the Board have the power to sell any property unless the property, in the judgment of the Board, is no longer required for the purpose of carrying out the business of the system or for effectuating the purposes of this chapter;

(2) To borrow money, make and issue bonds of the Board for any of its corporate purposes, and give security therefore, provided that the authorization for the issuance of the amount of bonds shall not exceed ten percent (10%) of the market value of the total investments of the System on the date that the indebtedness is issued;

(3) To make and issue bonds for the purpose of funding, refunding, purchasing, paying, or discharging any of the outstanding bonds or obligations issued or assumed by it.

(h) In the issuance of bonds, as provided under subsection (g), of this section, the Board may;

(1) authorize the issuance of such types of bonds as it may determine, including but not limited to, bonds on which the principal and interest are payable;

(A) exclusively from the income and revenues of a project financed with the proceeds of the bonds;

(B) exclusively from the income and revenues of certain designated investments, whether or not they are financed in whole or in part with the proceeds of the bonds; or

(C) from the Systems revenues in general.

(2) Any bonds may be additionally secured by a pledge of any loan, grant or contribution from the Government of the United States Virgin Islands or other source, or a pledge of income or revenue of the system, or a mortgage of any project, or part thereof, or other property of the system.

(i) The Board of Trustees, on behalf of the system, may accept grants or loans from and enter into contracts, leases, agreements, or other transactions with any federal agency, the Government of the United States Virgin Islands, or any instrumentalities or political subdivisions thereof, and expend the proceeds of any [of] the grants or loans for any of its corporate purposes.

(j) The Board may select, purchase, or acquire in the name of the system, the fee or any lesser interest in real property, improved or unimproved, for its purpose and may construct, remodel, and equip office buildings for its use and for investment purposes, and for the use of other departments or instrumentalities of the government, or appropriate private commercial entities as space to be made available for rent or lease from time to time. The Board may negotiate for the purchase of the real estate property by cash, by first mortgage, or by issuing bonds to the extent that the investment does not exceed the limitations of this chapter.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 715. GERS; Board of Trustees; duties and responsibilities / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Feb. 16, 1979, No. 4264, §§

1, 2, Sess. L. 1979, p. 10; May 24, 1979, No. 4301, §§ 1, 2, Sess. L. 1979, p. 53; Dec. 18, 1979, No. 4377, § 1, Sess. L. 1979, p. 249; Feb. 14, 1980, No. 4407, § 2(g), Sess. L. 1980, p. 13; Oct. 23, 1980, No. 4498, § 9, Sess. L. 1980, p. 229; Nov. 3, 1983, No. 4864, § 2, Sess. L. 1983, p. 195; June 1, 1984, No. 4951, § 5, Sess. L. 1984, p. 153; Jan. 14, 1985, No. 5035, § 14(a)–(c), Sess. L. 1984, p. 446; Oct. 14, 1986, No. 5206, § 104(e), Sess. L. 1986, p. 233; June 24, 1987, No. 5265, § 1303(a), Sess. L. 1987, p. 97; Nov. 28, 1987, No. 5290, § 5, Sess. L. 1987, p. 154; Mar. 15, 1990, No. 5522, §§ 1(ix), (x), 2, Sess. L. 1990, p. 36; Dec. 28, 1990, No. 5666, § 1, Sess. L. 1990, p. 469; Sept. 2, 1994, No. 6010, § 1(j), Sess. L. 1994, p. 164; Aug. 23, 1999, No. 6289, § 13 2., Sess. L. 1999, p. 74; Sept. 25, 2001, No. 6430, § 1, Sess. L. 2001, p. 187; Sept. 28, 2001, No. 6463, § 9(a), Sess. L. 2001, p. 270; Nov. 23, 2004, No. 6717, § 3, Sess. L. 2004, p. 262; Nov. 2, 2005, No. 6794, § 11 1.–11., Sess. L. 2005, pp. 388–391.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 715. GERS; Board of Trustees; duties and responsibilities / Annotations

HISTORY

Revision note

—**1995.** Substituted in subsection (b)(5) “no” for “not” preceding “later date” in the first sentence to correct a grammatical error pursuant to section 14 of Title 1.

Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsections (a), (b)(6), (d)(5), and twice in subsection (e) for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—**2005.** Act 6794, § 11, in subsection (a), substituted “two” for the first instance of “one” and inserted “, elected through a process to be determined and conducted by the system,” following the first instance of “System”; added the last sentence in the first paragraph; substituted “five” for “three” in the seventh sentence of the first paragraph; in the fourth to last sentence, inserted “Notwithstanding the date on which any member’s term expires, all members shall serve until their successors are appointed and approved”; designated second paragraph of subsection (a) as paragraph (1) and substituted “\$75” for “\$50” and “\$5000” for “\$3000” and added paragraph (2); in subsection (b)(7), substituted a period for a semicolon following “chapter” and added “No member of the Board ... real estate, and stocks”; added paragraphs (b)(9) through (11); in subsection (c), added paragraphs (1) through (6); and added subsections (i) and (j).

—**2004.** Act 6717, § 3, added the last sentence in the first paragraph of subsection (a).

—**2001.** Act 6430 added subsections (g) and (h).

Act 6463 rewrote the last sentence in subsection (b)(5) which formerly read “The Board shall also transmit to each member of the System, the Annual Report containing the above-mentioned information and a short explanatory discussion of each topic, which Annual Report shall be promptly made available to the news media;”.

—**1999.** Subsection (c): Deleted “subject to the requirements of Title 3, Chapter 25, Virgin Islands Code” following “System” in the last sentence.

—**1994.** Subsection (b)(4): Added “except those relating to classification or allocation of positions as provided under section 496 of this chapter or relating to discrimination under sections 523 and 531 of this chapter or relating to dismissals, demotions, and suspensions under section 530 of this chapter” following “Administrator”.

—**1990.** Subsection (a): Act No. 5522 amended the first paragraph generally and deleted “non-governmental” following “appointed” and substituted “\$75” for “\$30” and “\$3,000” for “\$750” in the third sentence and added the fifth sentence of the second paragraph.

Act No. 5666 substituted “\$50” for “\$75” in the third sentence of the second paragraph.

Subsection (b)(5): Act No. 5522 substituted “not later than four months” for “as soon as possible” preceding “following”, “the Board shall transmit” for “and in any event within a period of six months following the close of any year, cause to be transmitted” preceding “to the Governor” and “result” for “results” preceding “of its operations” in the first sentence and substituted “shall also transmit to each member” for “cause to be available for the information of the members” following “Board shall” and deleted “Legislature of the Virgin Islands and the” preceding “news media” in the second sentence.

Subsection (c): Amended generally by Act No. 5522.

—**1987.** Act No. 5265 amended the section generally.

Act No. 5290 substituted “as many Assistant Administrators as he deems necessary” for “an Assistant Administrator” following “appoint” in the second sentence of subsection (c).

—**1984.** Act No. 4951 added the tenth sentence of the first paragraph of subsection (a).

Act No. 5035 rewrote the fourth through ninth sentences and deleted “by the Governor” following “cause” in the tenth sentence of the first paragraph of subsection (a), rewrote subsection (c), added present subsection (d), and redesignated former subsections (d) and (e) as present subsections (e) and (f).

—**1983.** Subsection (b)(8): Added.

—**1980.** Subsection (d): Added by Act No. 4407.

Subsection (e): Added by Act No. 4498.

—**1979.** Subsection (a): Act No. 4301 rewrote the third sentence and added the fourth, fifth and sixth sentences of the first paragraph, and in the second paragraph, substituted “Lieutenant Governor” for “Government Secretary” following “filed with the” in the second sentence, “appointed non-governmental members shall receive \$30” for “trustees shall receive \$10” preceding “for each day” and “\$750” for “\$500” following “receive more than” in the third sentence and “of the Board” for “on the Board” following “service” at the end of the fourth sentence.

Act No. 4377 rewrote the third and fourth sentences as the third through sixth sentences of the first paragraph.

Subsection (b)(5): Act No. 4264 rewrote the second sentence.

Subsection (c): Act No. 4264 amended paragraph (9) generally.

Act No. 4301 added the third sentence in the introductory paragraph, substituted "Department" for "Division" preceding "of Finance" in paragraph (4) and "for" for "and" following "Board" in paragraph (6).

Effective date of amendments

—**1994.** Act Sept. 2, 1994, No. 6010, § 2, Sess. L. 1994, p. 165, provided that the amendment to this section by section 1(j) of the act shall be effective Jan. 1, 1995.

—**1987.** Act June 24, 1987, No. 5265, § 1303(d), Sess. L. 1987, p. 97, provided that section 1303(a) of the act, which amended this section shall be effective Sept. 1, 1987.

—**1984.** Act Jan. 14, 1985, No. 5035, § 17, Sess. L. 1984, p. 449, provided that the provision of the act amending this section shall become effective 90 days after the date of enactment of the act, Jan. 14, 1985.

—**Repealed.** Act Apr. 24, 1985, No. 5048, § 3, Sess. L. 1985, p. 6, provided for the repeal of Act Jan. 14, 1985, No. 5035, § 17, Sess. L. 1984, p. 449, which provided for the effective date of the amendment to this section by section 14 of Act No. 5035.

Legislative purpose. Act Feb. 14, 1980, No. 4407, § 1, Sess. L. 1980, p. 12, provided:

"It is the purpose of this act [which amended subsection (d) of this section], to provide that no independent instrumentality of the Government shall be exempt from laws made specifically applicable thereto, or generally applicable to independent instrumentalities of the Government of the Virgin Islands."

Repeal of 1984, Act No. 5035, amendment. Act Apr. 24, 1985, No. 5048, § 3, Sess. L. 1985, p. 6, provided for the repeal of Act Jan. 14, 1985, No. 5035, § 14, Sess. L. 1984, p. 446, which amended this section. Act June 4, 1985, No. 5076, § 1(a), Sess. L. 1985, p. 75, provided that any provision of the Virgin Islands Code repealed or deleted by Act No. 5035, § 14, shall be revived as provided by section 49 of Title 1.

Effect of repeal of 1984, Act No. 5035, amendment on existing members of Board of Trustees of the Employees Retirement System. Act June 4, 1985, No. 5076, § 1(b), Sess. L. 1985, p. 75, provided:

"Notwithstanding Act 5035, section 14 [which amended this section], as repealed by Act 5048, section 3, any person who was a member of the Board of Trustees of the Employees Retirement System of the Government of the Virgin Islands (hereinafter the 'Board') on April 12, 1985, is entitled to continue to serve as a member of the Board until the completion of the term to which he or she was appointed prior to April 12, 1985."

1986 amendatory act. Act Oct. 14, 1986, No. 5206, § 104(e), Sess. L. 1986, p. 233, provided for amendment of item (10) and repeal of item (12) of subsection (d). The provisions to which the act referred, however, were contained in the version of subsection (d) added by Act Jan. 14, 1985, No. 5035, § 14, Sess. L. 1984, p. 446, which act was repealed by Act April 24, 1985, No. 5048, § 3, Sess. L. 1985, p. 6. Consequently, the change provided for in Act No. 5206 could not be implemented.

Administration and assistance during transition of System to administration as independent agency. Act June 24, 1987, No. 5265, § 1303(b), Sess. L. 1987, p. 97, provided:

"The Director of Personnel shall continue as Administrator of the Government Employees Retirement

System until the Board appoints a new Administrator pursuant to Title 3, section 715, VIC, as amended by this act. The Director of Personnel shall provide any necessary assistance for the orderly transition of the System from being administered from within the Division of Personnel to its administration as a separate and independent agency. Such assistance shall include but not be limited to the loan of personnel, office space, office equipment and technical advice to be used until the Administrator appointed by the Board can hire new employees and acquire appropriate office space as required.”

ANNOTATIONS

- 0.5. Generally.
 - 1. Investments.
 - 2. Per diem travel expenses.
 - 3. Transactions prohibited.
 - 4. Annual reports.
 - 5. Rulemaking authority.

0.5. Generally.

Although the Board of Trustees is authorized to adopt rules and regulations and to add such other regulations deemed proper for the efficient administration of the Government Employees' Retirement System, the statute distinctly restricts the Board to adopting rules and regulations which govern its internal organization and functioning and requires that they be in accordance with the law. *Villafane v. Bryan*, 43 V.I. 149, 2001 V.I. LEXIS 8 (Terr. Ct. St. C. 2001).

Although nonparty movants were not explicitly mentioned in the original consent judgment, they had standing to seek enforcement of the judgment because under Virgin Islands law, the retirement system was intended to benefit present and former government employees such as movants, and the Board of Trustees was required to act to benefit the system and, presumably, its members. *Employees Retirement Sys. v. Quinn*, 30 V.I. 157, 1994 U.S. Dist. LEXIS 8440 (D.C.V.I. 1994).

1. Investments.

Power to determine what investments shall be made by the Employees' Retirement System rests solely with the Board of Trustees, but if the officer certifying loans believes a loan is illegal he should return the voucher therefor unsigned to the board, and if the dispute cannot be resolved the matter should be referred to the attorney general. 7 V.I.Op.A.G. 274.

2. Per diem travel expenses.

Executive Order limiting per diem travel expense allowance for government employees does not apply to members of the Board of Trustees of Government Employees Retirement System. 10 V.I.Op.A.G. 91.

3. Transactions prohibited.

Proposed sale of land owned by Government Employees' Retirement System to wife of System's trustee would be voidable. 10 V.I.Op.A.G. 95.

Fact that trustee of Government Employees' Retirement System would abstain from deliberating or voting on issue of proposed sale of System-owned land to his wife would not validate such a transaction. 10 V.I.Op.A.G. 95.

Trustee of Government Employees' Retirement System involved in sale of System-owned land to his wife would be subject to an action to declare such transaction null and void. 10 V.I.Op.A.G. 95.

4. Annual reports.

The fact that a local statute provided in detail for the content and timing of annual reports reflecting the financial condition of the Government Employees Retirement System supported the finding that the members of the system had a legitimate claim of entitlement and thus a property interest in receiving reports; therefore the motion to dismiss the portion of the complaint alleging deprivation of this right was denied. *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

5. Rulemaking authority.

Since statutes distinctly condition eligibility for enhanced early retirement benefits upon certification by a department's chief executive officer, rules empowering the Board of Trustees of the Government Employees Retirement System to make the final determination as to whether the certified position submitted is within the eligible class, providing that the Board at its own discretion may reopen classification of eligible employees, and requiring that certification (offered by the department head) shall state how much chlorine, sewage, or carcinogens is involved on a daily, weekly, monthly or yearly basis, all directly conflicted with the statutory language and were null and void. *Villafane v. Bryan*, 43 V.I. 149, 2001 V.I. LEXIS 8 (Terr. Ct. St. C. 2001).

Administrative rule promulgated by Government Employees Retirement System to implement law regarding early retirement benefits was null and void to the extent it added factors, both unauthorized by and contrary to law, that could result in arbitrary decisions as to who was eligible, and retirement system further erred in promulgating rules and regulations which effectively vitiated the eligibility certification of the official solely vested by Legislature with authority to make such certifications. *Commissioning v. Government Employees Retirement Sys.*, 39 V.I. 141, 1998 V.I. LEXIS 23 (Terr. Ct. St. T. and St. J. 1998).

Cited. Cited in *Molloy v. Government Employees Servs. Comm'n*, 42 V.I. 89, 2000 V.I. LEXIS 8 (Terr. Ct. St. T. and St. J. 2000).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 716. Treasurer; legal counsel

§ 716. Treasurer; legal counsel

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 716. Treasurer; legal counsel / Text

(a) The Board of Trustees shall appoint a treasurer of the system who shall perform the following duties:

(1) Act as official custodian of the cash and securities belonging to the system and provide adequate safe deposit facilities for the preservation of the securities and hold the cash and securities subject to the order of the Board;

- (2) Receive all items of cash belonging to the system;
- (3) Collect the interest and principal on securities acquired by the system and deposit all such amounts in a special trust fund maintained in the name of the board;
- (4) Make payments for the various purposes specified in this chapter in accordance with the direction and authorization of the Administrator;
- (5) Submit such periodic reports or statements of accounts as the board may require.

(b) The Administrator of the Government Employees Retirement System shall employ, with the advice and consent of the Board of Trustees, an attorney for the system.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 716. Treasurer; legal counsel / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Mar. 15, 1990, No. 5522, § 1(xi), Sess. L. 1990, p. 37; Aug. 23, 1999, No. 6289, § 13 1., Sess. L. 1999, p. 74.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 716. Treasurer; legal counsel / Annotations

HISTORY

Revision note

—**1995.** Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” in subsection (a) for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—**1999.** Rewrote subsection (a).

—**1990.** Deleted the last paragraph of subsection (a) and added subsection (b).

ANNOTATIONS

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717. Investments

§ 717. Investments

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits /

§ 717. Investments / Text

(a) [Repealed.]

(b) The Board is vested with the discretionary investment strategy authority to vary the investment criteria set out in this section by no greater than 25% of the aggregate amounts specified. However, the Board is prohibited from changing the securities ratings specified in this section. The Board of Trustees shall make investment decisions in accordance with the “prudent man standard.” The reserves of the system in excess of the cash requirements for current operations shall be invested and reinvested in the following types of securities and investments and under the conditions and limitations herein prescribed:

(1) Bonds and notes of the United States Government and its agencies and instrumentalities, the obligations of which, both as to principal and interest, are guaranteed unconditionally by the United States Government;

(2) Bonds or notes which are general obligations of any State in the United States, or of any political subdivision thereof; Provided, such political subdivision had a population as shown by the last Federal Census preceding such investment of not less than 30,000 inhabitants; And provided further, That such State or political subdivision thereof has not defaulted for a period longer than 30 days in the payment of interest or principal on any of such general obligations during the period of 10 years next preceding such investment;

(3) Bonds or other obligations which are payable from revenue or earnings specifically pledged therefor of a public utility which is municipally owned either directly or indirectly through any civil division, authority or public instrumentality of the municipality, provided: (a) the municipality has at least 30,000 inhabitants; (b) the utility has been in operation for at least 10 years prior to the date of investment; (c) bonds or other obligations of such utility have not been in default for any period longer than 30 days; (d) the rates for service are fixed and maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both the principal and interest on such bonds or obligations; (e) the investment in any one issue of such bonds does not exceed 15 percent of such issue, and that the total investment in this type of security shall not at any time exceed 10 percent of the total investment of the system;

(4) Bond or any other evidences of indebtedness issued or guaranteed by any domestic railroad corporation, or in equipment trust certificates, provided that these securities and investments bear a rating of “BBB” or better by any two nationally known security concerns. Not more than 2 percent of total investments shall consist of any one issue of these bonds.

(5) Bonds or other evidences of indebtedness of any domestic public utility corporation, provided that these securities and investments bear a rating of “BBB” or better by any two nationally known security rating concerns. Not more than 2 percent of total investments shall

consist of any one issue of these bonds.

(6) Bonds or other evidences of indebtedness of any domestic industrial corporation, provided that these securities and investments bear a rating of “BBB” or better by any two nationally known security rating concerns. Not more than 2 percent of total investments shall consist of any one issue of these bonds.

(7) Bonds or other obligations of the Commonwealth of Puerto Rico or of the Territories of the United States, provided that the investment in any one issue of bonds of these communities shall not exceed 10 percent thereof, and that the total investment in all securities and investments of any one of such communities shall be limited to 2 percent of the total investment account of the system.

(8) Common and preferred stocks of any corporation chartered under the laws of the United States, or of any state, district or territory thereof, if listed on a national securities exchange as defined in the Federal Securities Exchange Act, and are legal for trust funds in the Virgin Islands; or common and preferred stocks of any foreign corporation if listed on any internationally recognized security exchange. The investment in the stock of any single corporation should not exceed 1 percent of the market value of the total investment of the fund on the date of purchase or be greater than 1 percent of the total outstanding stock of the corporation. The aggregate amount to be invested in common and preferred stocks shall be limited to 60 percent of the market value of the total investments of the system on the date the investment is made. Investment in foreign stocks shall be limited to 10 percent of the market value of the total investment of the system.

The aggregate amount to be invested in common and preferred stocks shall be limited to 20 percent of the book value of the total investments of the system on the date the investment is made and the investment in any such stocks or a sale thereof shall be approved by at least two-thirds of the membership of the board.

(9) (A) Viatical senior and/or life settlement policy contract investments provided:

(i) When the investment is in a group of life insurance policies, that the minimum number of measured lives is 100;

(ii) All policies purchased as investments must be issued by insurers licensed to do business in at least on[e] of the United States or its territories;

(iii) The face value of any single policy investment by the system shall not exceed the greater of \$5,000,000 or 2% of the aggregate face value of policy investments by the system;

(iv) The aggregate face value of policy investments by the system on any individual life shall not exceed the greater of 10,000,000 or 1% of the aggregate face value of

policies purchased as investments by the system; and

(v) Policy investments may include policies on the life of members of the system.

(B) The total purchase price of investments of the system in viaticum life and senior settlement policy contracts shall not exceed 20% of the total investments of the system.

(10) All securities and investments purchased by the said Board shall be registered in the name of the system, and no securities or investments shall be purchased or sold or in any manner hypothecated except by the action of said Board duly entered in the record of its proceedings. However, notwithstanding any other provision of law, the Board of Trustees may establish a domestic trust that will meet applicable U.S. Internal Revenue Code provisions, for the purpose of receiving, holding, paying, and transferring assets of the system on the continental U.S. mainland.

Subject to the limitations prescribed in this section, the Board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments that it shall have acquired, as well as the proceeds thereof. All securities and investments shall be acquired by the Board at prices representing the prevailing market value for such securities and investments.

Except as otherwise provided herein, no trustee and no employee of the Board shall have any direct interest in the income, gains or profits of any investments made by the Board, nor shall any such person receive any pay or emolument for service in connection with any investment made by the Board. No trustee or employee of the Board shall become an endorser or surety or in any manner an obligor for money loaned or borrowed from the system.

All interest and dividends derived from investments, and any gains from the sale or exchange of investments, shall be credited by the treasurer to the account of the system.

(11) Personal loans to members of the system. Subject to such rules and regulations that the Board may prescribe, any member of the system who has contributed for at least 2 years shall have the privilege of borrowing from the retirement system, provided that a member shall not have more than 2 loans in a fiscal year.

The amount which any member may borrow shall not exceed seventy-five (75%) percent of the member's contribution credits in the system and shall not, in any event, exceed the sum of \$50,000. In case of separation from service for any reason, including death or disability of the member, the balance due on the loan and any accrued interest thereon, shall be deducted from any refund of contributions, annuity, death benefit or any other benefit due to the member or to his beneficiary. This rate shall include a charge for insurance on loans against death or total and permanent disability, which development shall effect a cancellation of any unpaid balance of a loan and any accrued interest thereon. The principal amount, together with interest thereon, shall

be repaid to the system in installments at least equal to 5 percent of the member's salary and at a rate that will effect repayment of the loan before the member attains the retirement age. Such repayments shall be deducted from the salary of the member at the same time and in the same manner as the member's contributions to the system are deducted.

Personal loans shall carry interest rates which shall be set in advance, from time to time, by the Board.

(12) Mortgage loans to members or retirees of the system for initial construction phases of a home, for purchase of a home, or for capital improvements of a home. Subject to such rules and regulations that the board may prescribe, any member of the system who has contributed for at least five years shall have the privilege of borrowing from the retirement system for the initial construction phases of a home (including the construction of cisterns and foundation slabs), for the purchase of a home, or for capital improvements of a home owned by the borrowing member which improvements increase the value of the property. The board shall, to the extent possible, apportion the loans equally between members or retirees residing in St. Croix and members or retirees residing in St. Thomas and St. John. A member or retiree who already owns a home, whether rented or owner-occupied, shall be eligible for a mortgage loan (i) for capital improvements to that home; (ii) for refinancing and amortizing an existing first priority mortgage on that home; and (iii) for purchase of a second residential property. The Board may require as a condition to making a mortgage loan that the mortgagor insure the system's interest as mortgagee of the property with insurance coverage similar to that coverage which is normally required for a mortgage loan by a bank, insurance company or other mortgage lender, including but not limited to title, casualty, and life insurance. The Board shall provide to the mortgagor an annual mortgage statement indicating the balance owed, and the principal and interest paid on the loan.

(A) Thirty (30) percent of the reserves in excess of the cash requirements for current operations shall be available for investment in loans provided for in this subdivision.

(B) The total amount of loan outstanding to any member shall not exceed two hundred fifty thousand (\$250,000) dollars.

(C) Notwithstanding the age of the member, the loan authorized under this subsection, may extend for a thirty (30) year period;

(D) During construction until a mortgage is executed a bond shall be given to the system as security. In addition, the salary of the member shall be deemed collateral security as it becomes due and payable until the principal amount of the loan, together with any interest thereon, are paid in full to the system pursuant to the provisions of paragraph (g) of this subdivision.

(E) Every loan under this subdivision shall be secured by a first or second priority mortgage upon the land and upon each building or other structure thereon which is to be constructed, to be purchased, or to be improved under the provisions of this subdivision, until the

principal amount of the loan, together with any interest thereon, are paid in full to the system pursuant to the provisions of paragraph (g) of this subdivision. The Board is authorized to consent to the mortgaging of real property, previously mortgaged pursuant to the provisions of this paragraph to a private lending institution, for the purpose of securing an additional construction or improvement loan from such institution by the member-grantee or for the purpose of refinancing an existing first priority mortgage. If the Board shall determine that the total value of the land and any improvements thereon is sufficient to protect the interest of the system as holder of a second priority mortgage, then such consent agreement may include subordination of the rights of the system in the mortgage under this paragraph for all purposes, including foreclosure proceedings by the mortgagee.

(F) Every member, securing a mortgage loan under the provisions of this subdivision shall assign to the system as further security, until the loan and interest thereon are paid in full, all of his accumulated contributions as well as any other contributions which may accumulate in the system in his favor; provided, however, that in the case where two persons may hold a mortgage loan jointly, which loan is not insured by a death or permanent disability policy as provided by subparagraph (H), and one shall have died or become permanently disabled, the other may elect to have a portion of the benefits assigned by the deceased or disabled applied each month to the mortgage loan in lieu of a monthly mortgage payment by the surviving or non-disabled party until the entire amount of the assignment is depleted. It is further provided, that in order to assist a member in obtaining a loan pursuant to this paragraph, the following may be permitted:

(1) A member may, in lieu of a cash down payment, assign to the system his equity in any real property, improved or unimproved, as follows:

(A) Upon the assignment of the equity, as provided in this paragraph, the member shall be eligible for a mortgage loan, if his income is sufficient to meet the loan payments as prescribed in this section; or

(B) If the equity assigned, as provided in this paragraph, by the member is less than the amount that is needed for the down payment, the member may, in order to qualify for a loan under this paragraph, present in cash the difference between the value of the assigned equity and the required down payment.

(2) To establish eligibility for a loan under this paragraph and ability to repay the loan, a member may, present a financial statement projections of rental income to be received from the home that he intends to build or purchase with the loan.

(G) The principal of the loan together with interest thereon shall be repaid to the system in installments at least equal to 10 percent of the member's annual salary, and at a rate that will effect a repayment of the loan within a period of thirty (30) years. Such repayments shall be deducted from the salary of the member at the same time and in the same manner as the

member's contributions to the system are deducted.

(H) Interest on such loan shall carry interest rates which shall be set in advance from time to time by the Board. In addition to interest, the Board may charge for insurance on each loan against the eventuality of the death or the total and permanent disability of the member-grantee, which eventually shall result in a cancellation of any unpaid principal of the loan and any accrued interest thereon.

(I) The board is hereby authorized to have transferred from the Retirement System Mortgage Loan Fund, created and established as a special fund in the Treasury of the Virgin Islands by section 3026 of Title 33, to the Retirement System such amounts as from time to time shall be necessary to restore to the System any losses suffered by it as a result of defaults on any loans or of any other cause incidental to the administration or operation of the loan program under this subdivision (11).

(J) The Governor of the Virgin Islands shall be empowered to temporarily assign any employee of the Government of the Virgin Islands to the Retirement System to assist in the implementation of the program authorized by this subdivision (11).

(K) The Board may, to the extent necessary to protect the interests of the system, bid for the purchase of any property on which it holds a second mortgage, provided that the bid does not exceed the combined value of the first and second mortgages on said property. Amounts necessary to meet successful bids shall be paid from the Retirement System Mortgage Loan Fund as created by section 3026 of Title 33 of this Code.

(L) No member who has obtained a loan under this subdivision (11), the amount of which is less than the limit provided in paragraph (b) hereof, shall be prohibited because of such loan from obtaining an additional loan for an amount which, when added to the amounts outstanding on any other loan or loans under this subdivision, would not exceed the limit provided in paragraph (b) hereof.

(M) Nothing in this subdivision shall prohibit two or more members or retirees from obtaining loans as individual members or retirees on the same property, provided that the value of the property exceeds the combined loans and the income and credit of each applicant justifies the amount of the loan to that applicant.

(N) If a member fails to provide evidence of property insurance coverage to the system for the collateral interest in the mortgaged property, the Board of Trustees, upon thirty day's notice to the member, shall place the member's mortgage into the forced-placed protection program to protect the system's mortgage interest in the mortgaged property. The system shall recover the cost of the forced-placed insurance premium in the following manner: (1) the member may pay the cost of the premium in full within ten days of notification that the mortgage has been placed in the forced-placed protection program; or (2) the cost of the forced-placed premium shall be added to the unpaid mortgage principal at an amortized interest rate that is

consistent with the mortgage interest rate applicable for that particular mortgage category on the date that the premium is added to the principal.

(13) Chattel mortgages to members or retirees of the system, subject to such rules and regulations as the Board may prescribe, consistent with the following provisions:

(A) Chattel mortgages shall be made for the purchase of new automobiles, new passenger-carrying trucks and vans, new motorcycles or other new passenger-carrying type vehicle.

(B) Interest on such loans shall be set in advance, from time to time, by the Board and shall be repayable in no more than five years.

(C) The total amount of a chattel mortgage on the purchase of a new automobile may not exceed eighteen thousand (\$18,000) dollars.

(D) The chattel mortgage shall be recorded with the Recorder's Office and the U.S. Virgin Islands Police Department (V.I.P.D.) of the respective district and shall be noted on the certificate of title of the vehicle when purchased.

(E) The chattel mortgage shall be secured by the new automobile for which the loan is being obtained and the member shall insure the automobile for which the loan is made with comprehensive coverage for no less than the value of the system's loan on the vehicle and the insurance policy shall make the system as beneficiary to the extent of its lien.

(F) The Board shall not determine that members or retirees who are otherwise qualified to obtain a loan under this paragraph (12) are ineligible for a loan for the sole reason that the vehicle will be used, in whole or in part, as a taxicab.

(G) Regulations shall be promulgated concerning the granting of a chattel mortgage for the purchase of a new automobile and shall include, but not be limited to, down payment requirements for such loans.

(H) If a member fails to provide evidence of comprehensive automobile insurance coverage to the system for the collateral interest in the chattel mortgage, the Board upon thirty days' notice to the member, shall place the member's chattel mortgage into the forced-placed automobile insurance protection program to protect the system's chattel mortgage interest in the automobile. The system may recover the cost of the forced-placed automobile insurance premium in the following manner: (i) the member may pay the cost of the forced-placed automobile insurance premium in full within ten days of notification that the chattel mortgage has been placed in the force[d]-placed protection program; or (ii) the cost of the forced-placed automobile insurance premium shall be added to the unpaid chattel mortgage principal at an amortized interest rate that is consistent with the chattel mortgage interest rate applicable to automobile loans on the date that the premium is added to the principal.

(14) Personal loans to members who have retired and are entitled to annuities, provided such loans do not exceed \$50,000, and that the recipient has no other outstanding personal loan from the system. The Board shall prescribe rules and regulations for the issuance of such loans which insure a reasonable repayment schedule, at least three collateral options, and rate of interest not less favorable to the recipient as the rate charged for personal loans to members who are not retired. No member who has retired shall be denied a personal loan because of his or her age, race, sex, color, creed, national origin or political affiliation. This payments shall include a charge for insurance on loans against death which developments shall effect a cancellation of any unpaid balance of a loan and accrued interest thereon. The loan authorized under this paragraph shall be payable within a 10 year period.

(15) Loans to members or retirees of the system solely for the purchase of land, subject to such rules and regulations as the Board may prescribe, consistent with the following provisions:

(A) Secured by a first priority mortgage, provided that such a requirement shall not prevent the obtaining of a loan for the construction of a house on the property pursuant to the provisions of subdivision (11) of this section. The Board may consent to subordinate its interest in the first priority mortgage to a private lending institution, for the purpose of securing a construction loan for the property.

(B) No loan may exceed fifty thousand dollars (\$50,000).

(C) Notwithstanding the age of the member, the loan authorized under this subsection may extend for a fifteen (15) year period.

(D) Any loan made pursuant to the provisions of this subdivision shall be limited to the purchase of land on which the borrower intends to construct his principal place of residence.

(E) The provisions of subdivision (11) of this section pertaining to loan administration, the Retirement System Mortgage Loan Fund, interest rate, and repayment shall be applicable to a loan made pursuant to this subdivision to the extent they are consistent with this subdivision.

(F) The Board shall provide to the mortgagor an annual mortgage statement indicating the balance owed, and the principal and interest paid on the loan.

(16) Real property purchased and/or developed by the Board for sale for homeownership purposes, provided, that members of the System shall have preference in the purchase of any such real property from the Board.

(17) Bonds or other indebtedness issued by foreign governments or foreign corporations provided that (a) these securities bear a rating of “BBB” or better by any two internationally

known securities rating concerns, and (b) not more than 2 percent of total investments shall consist of any one issue of these bonds. The aggregate amount to be invested in foreign bonds shall be limited to 10 percent of the market value of the total investments of the system on the date the investment is made.

(18) If the Board determines during any fiscal year that compliance with this section will result in lower overall earnings for the fund than are obtainable from alternative investment opportunities that would provide equal or superior security, including guarantee of yield, the Board may substitute those higher yielding investments, to the extent actually available for acquisition, for the investments otherwise specified by this section. Additionally, if adherence to the diversification guidelines specified in this section would conflict with the Board's fiduciary obligations, or would conflict with the standards for prudent investment of the fund, the Board may substitute alternative investments. In that case, the Board shall estimate the amount of funds available for investment in substitute alternative investments and the amount of funds invested pursuant to this section and shall submit a statement with regard to alternative investments, reporting the description of the type, quantity, and yield of the investments substituted in its annual report to the Governor and Legislature. All investment decisions made pursuant to this section shall be made in accordance with the prudent investor standard.

(19) Notwithstanding any other provision of law, the Board of Trustees may establish the loan lending limits for all categories of loans to members.

(20) **Alternative Investments.** The Board of Trustees may administer the investment portfolio programs of the system including the Alternative Investment Programs. The maximum amount which may be invested in the Alternative Investment Program is no more than 5% of the total amount of the available investment portfolio.

(A) General; definitions. Alternative Investments are investment opportunities that have not been identified by the traditional public equity or fixed income capital markets. The alternative asset class offers the potential for significantly greater returns than those available in the public markets. The returns are commensurate with risk presented by the class, the as [sic] liquidity, lack of standard historical evaluation data, use of derivative securities and leverage.

Examples of the type of investments considered as alternative or non-traditional investments are:

(i) Private Equity Venture
Capital Mezzanine Acquisition/Buyouts Restructuring Subordinated Debt Special Situations

(ii) Natural Resources Oil and Gas Agriculture

(iii) Managed Futures/Commodities Active Indexed Long-Only and Long/Short

(iv) Hedge Funds and Portfolio
Overlay Macro Long/Short Event-Driven Market Neutral

(v) Real Estate

(B) Types of Alternative Investments - definitions.

(i) “Early-stage” means companies that do not have material and sustainable revenues from operations. Early-stage companies frequently have not achieved profitability.

(ii) “Intermediate-stage” means companies that have achieved success in generating meaningful levels of revenues and are in a revenue/market growth phase with the expectation of achieving profitability. However, due to the heavy capital requirements needed to support growth, these companies may experience negative cash flows.

(iii) “Late-stage” means companies in development when the rate of growth is slowing but the business is established. Late-stage companies are expected to demonstrate profitability and positive cash flow. These companies often have a dominant position in their primary markets.

(iv) “Mezzanine Funds” means funds that include investments in subordinated debt or equity of public owned companies. They combine features typically associated with debt instruments, including current income and covenant protections, with the opportunity to enhance returns through warrants, conversion rights or options.

(v) “Buyouts/Acquisitions” means partnerships that provide funding to acquire majority or controlling interests in a business or product lines from either a public or private company.

(vi) “Restructuring/Recovery” means investments made in distressed or poorly performing companies, with the intent of initiating a recovery via financial restructuring or the introduction of management expertise. Partnership investments may include debt or equity securities.

(vii) “International” means funds that make the majority of their investments by strategy and policy outside of the United States.

(viii) “Managed Futures” means the management of contracts involving the obligations to purchase, or deliver, a specified commodity or financial instrument at a specified price at some specific future period.

(ix) “Hedge Funds” means partnerships that use investment and risk management skills to seek positive returns regardless of market direction.

(x) “Market Neutral Strategies” means investments wherein both long and short positions are taken by the manager, and as long as the long position outperforms the short position, market returns have no bearing on the outcome.

(xi) “Subordinated Debt” means a debt obligation that has unsecured junior claims to interest and principal subordinated to ordinary debentures or other debt obligations of the issuing corporation.

(xii) “Special Situations” means unusual investment opportunities due to some special development, i.e. a merger, oil discovery, new product development, etc., that is expected to most favorably affect the earnings outlook for the public's psychology with respect to the prospects for a particular company.

(xiii) “Venture Capital” means capital that is subject to more than a normal degree of risk, usually associated with a new business or venture, made either directly or indirectly in a commingled fund.

(xiv) “Real Estate” means real estate wherever situated and includes investments in real estate trust.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717. Investments / History

—Added June 23, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Feb. 21, 1964, No. 1086, Sess. L. 1964, p. 27; Apr. 6, 1964, No. 1186, Sess. L. 1964, p. 198; Apr. 15, 1966, No. 1724, Sess. L. 1966, p. 232; Apr. 15, 1966, No. 1726, § 1, Sess. L. 1966, p. 233; Sept. 13, 1966, No. 1818 §§ 1, 2, Sess. L. 1966, p. 520; Apr. 23, 1970, No. 2700, § 11, Sess. L. 1970, p. 80; Feb. 26, 1974, No. 3533, §§ 1–4, Sess. L. 1974, p. 33; Aug. 8, 1974, No. 3613, §§ 1–3, Sess. L. 1974, p. 212; Dec. 29, 1976, No. 3921, Sess. L. 1976, p. 246; Oct. 28, 1977, No. 4052, Sess. L. 1977, p. 246; July 31, 1978, No. 4166, Sess. L. 1978, p. 163; Oct. 30, 1978, No. 4245, Sess. L. 1978, p. 277; Oct. 30, 1978, No. 4247, Sess. L. 1978, p. 281; Feb. 16, 1979, No. 4267, Sess. L. 1979, p. 12; Oct. 8, 1979, No. 4352, § 3, Sess. L. 1979, p. 140; Dec. 18, 1979, No. 4389, §§ 1, 2, Sess. L. 1979, p. 264, 265; Mar. 7, 1980, No. 4421, § 1, Sess. L. 1980, p. 39; July 9, 1980, No. 4449, §§ 1, 2, Sess. L. 1980, p. 105; Nov. 3, 1983, No. 4864, §§ 3(a)–(d), 5, 6, Sess. L. 1983, p. 196, 197; June 15, 1984, No. 4964, § 1(b), Sess. L. 1984, p. 177; Oct. 19, 1984, No. 5014, §§ 212(a), (b), 225(a), Sess. L. 1984, pp. 364, 371; Oct. 16, 1986, No. 5215, Sess. L. 1986, p. 329; Nov. 27, 1989, No. 5486, Sess. L. 1989, p. 152; Apr. 2, 1991, No. 5701, § 7(a), Sess. L. 1991, p. 9; June 9, 1994, No. 5982, § 1, Sess. L. 1994, p. 76; June 9, 1994, No. 5983, § 1, Sess. L. 1994, p. 78; June 9, 1994, No. 5984, Sess. L. 1994, p. 78; Dec. 13, 1995, No. 6088, § 16, Sess. L. 1995, p. 244; Mar. 22, 1996, No. 6098, § 1, Sess. L. 1996, p. 27; Jan. 20, 1998, No. 6198, §§ 1–3, Sess. L. 1998, pp. 16, 17; Apr. 6, 1998, No. 6223, §§ 5(a), (b), Sess. L. 1998, p. 235; July 10, 1998, No. 6239, §§ 6–8, Sess. L. 1998, p. 369; Oct. 31, 1998, No. 6276, § 20, Sess. L. 1998, p. 500; Sept. 28, 2001, No. 6463, §§ 3, 9(b), Sess. L. 2001, pp. 268, 270; Dec. 1, 2001, No. 6479, § 30,

Sess. L. 2001, p. 334; Feb. 21, 2002, No. 6503, § 5, Sess. L. 2002, p. 269; Nov. 8, 2001, No. 6463, § 9(b)(1), Sess. L. 2001, p. 270; Jan. 30, 2002, No. 6479, § 15, Sess. L. 2001, p. 327; Nov. 2, 2005, No. 6794, §§ 12 1.-7., 31 1.-3.(a), (b), 32, Sess. L. 2005, pp. 391-396, 437, 438; Dec. 29, 2006, No. 6905, § 5(5.), Sess. L. 2006, p. 334.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717. Investments / Annotations

HISTORY

References in text. The Securities Exchange Act, referred to in subsection (b)(8), is classified to 15 U.S.C. § 78a et seq.

Amendments

—**2006.** Act 6905, § 5(5.), inserted “Governor and” before “Legislature” in the third sentence in subsection (b)(18).

—**2005.** Act 6794, § 12, in subsection (b), inserted “The Board is vested ... ‘prudent man standard.’ ” at the beginning of the subsection; in paragraphs (4), (5), (6) and (17), substituted “BBB” for “A”; added the last sentence at the end of the first paragraph of (10); in paragraph (12), capitalized all the subparagraph designators and added (b)(12)(N); in paragraph (13), capitalized all the subparagraph designators and added (b)(13)(H); rewrote paragraph (b)(18); and added paragraphs (b)(19) and (20). Act 6794, § 31, in subsection (b), inserted “and investments” following “securities”; inserted new (b)(9) and renumbered the remaining subparagraphs accordingly; in newly renumbered subparagraph (10), in the first paragraph, after the first occurrence of “securities”, inserted “and investments”, and after the second occurrence of “securities”, inserted “or investments”; and in the second paragraph, second sentence, inserted “and investments” twice following “securities”. Act 6794, § 32, inserted “new motorcycles” following “vans” in subsection (b)(13)(A).

—**2002.** Act 6503, § 5, inserted “or retiree” following “member” in the fourth sentence in subsection (b)(11).

—**2001.** Act 6463, § 9(b)(1), Nov. 8, 2001, pursuant to Legislative override, substituted “\$50,000” for “\$20,000” at the end of the first sentence in the first undesignated subparagraph following paragraph (10) of subsection (b).

Act 6463 substituted “two hundred fifty thousand dollars (\$250,000)” for “one hundred-five thousand (\$105,000)” in subsection (b)(11)(b); rewrote subsection (b)(11)(c); added the language beginning with “It is further provided” and ending with subparagraph (B)(2) in subsection (b)(11)(f); substituted “within a period of thirty (30) years” for “prior to member’s attaining the age of 70 years” in subsection (b)(11)(g); substituted “fifty thousand dollars (\$50,000)” for “thirty thousand dollars (\$30,000)” in subsection (b)(14)(b); rewrote subsection (b)(14)(c); and added subsection (b)(17).

Act 6479, § 15, Jan. 30, 2002, pursuant to Legislative override, substituted “\$50,000” for “\$8,000” in the first sentence of paragraph (13) in subsection (b).

Act 6479 added the last two sentences in subsection (b)(13).

—**1998.** Act No. 6198 inserted “or retirees” following “members” wherever it appeared in subsections (b)(11), (12) and (14) and in subsection (b)(13), substituted “at least three collateral options” for “collateral” following “repayment schedule” in the second sentence and added the third sentence.

Act No. 6223 added the last sentence in subsection (b)(11) and added subsection (b)(14)(f).

Act No. 6239 added the third paragraph in subsection (b)(10), rewrote the first sentence of subsection (b)(11)(h) and rewrote subsection (b)(12)(b).

Act No. 6276 substituted “60 percent” for “50 percent” in the third sentence of subsection (b)(8).

—**1996.** Subsection (b)(12)(b): Substituted “five” for “four” preceding “years”.

—**1995.** Subsection (b)(14)(b): Substituted “thirty thousand dollars (\$30,000)” for “fifteen thousand dollars (\$15,000)”.

—**1994.** Subsection (a): Repealed by Act No. 5982.

Subsection (b): Act No. 5982 deleted “interest has been paid by the corporation on any of its indebtedness for at least the 5 years last past and” following “provided” in paragraphs (4)–(6), rewrote paragraph (8) and added paragraph (16).

Act No. 5983 substituted “one hundred five thousand (\$105,000) for “seventy-five thousand (\$75,000)” in subparagraph (11)(b).

Act No. 5984 substituted “\$20,000” for “\$15,000” in paragraph (10), “thirty (30)” for “twenty-five (25)” in paragraph (11)(a), “eighteen thousand (\$18,000)” for “twelve thousand (\$12,000)” in paragraph (12)(c) and “\$8,000” for “\$5,000” in paragraph (13).

—**1991.** Subsection (b)(15): Added.

—**1989.** Subsection (b)(11): Substituted “may” for “shall” following “Board” and made a minor change in punctuation in the fifth sentence of the introductory paragraph, substituted “seventy-five thousand (\$75,000)” for “fifty thousand (\$50,000)” in subparagraph (b) and “mortgagee” for “mortgagor” following “proceedings by the” in the third sentence of subparagraph (e), rewrote subparagraphs (f) and (h), and deleted “and no member shall be required to consolidate or refinance any loan previously obtained under this subdivision as a condition precedent to the obtaining of an additional loan under this subdivision” following “paragraph (b) hereof” at the end of subparagraph (l).

—**1986.** Subsection (b)(8): Substituted “5” for “10” preceding “years next preceding the date of investment”.

—**1984.** Act No. 5014 added subsection (a), designated existing provisions of section as subsection (b), inserted “on the purchase of a new automobile” preceding “may not exceed” in present subsection (b)(12)(c) and substituted “twelve thousand (\$12,000) dollars” for “seventy-five (75%) percent of the cost of the new automobile purchased” thereafter and added present subsection (b)(12)(g).

Act No. 4964 substituted “U.S. Virgin Islands Police Department (V.I.P.D.)” for “Department of Public Safety” in subsection (b)(12)(d).

—**1983.** Paragraph (11)(b): Substituted “fifty thousand (\$50,000)” for “thirty-five thousand (\$35,000)” preceding “dollars”. Paragraph (11)(h): Substituted “In addition to” for “Such” preceding “interest” at the beginning of the second sentence and “the Board shall” for “rate shall include a” thereafter and

“eventually” for “eventuality” following “which” in that sentence, “loan” for “loans” preceding “shall be at a rate fixed by the Board, but shall not exceed” in the first sentence and “10” for “8 ½” thereafter and made other minor stylistic changes in that sentence.Paragraph (11)(l): Added.Paragraph (11)(m): Added.Paragraph (13): Added.Paragraph (14): Added.

—**1980.** Paragraph (12): Act No. 4449 substituted “new passenger-carrying trucks and vans, or other new passenger-carrying type vehicle” for “only” following “automobiles” in subparagraph (a) and added subparagraph (f).Paragraph (11): Act No. 4421 substituted “70” for “60” in subparagraphs (c) and (g).

—**1979.** Paragraph (11)(b): Act No. 4389 substituted “thirty-five thousand (\$35,000)” for “twenty thousand (\$20,000)” preceding “dollars”.Paragraph (11)(h): Act No. 4389 substituted “8 ½” for “6” preceding “percent” in the first sentence.Paragraph (12)(b): Act No. 4352 substituted “four” for “three” following “no more than”.Paragraph (12)(c): Amended generally by Act No. 4267.Paragraph (12)(d): Amended generally by Act No. 4267.Paragraph (12)(e): Amended generally by Act No. 4267.

—**1978.** Paragraph (11)(f): Amended generally by Act No. 4245.Paragraph (11)(k): Added by Act No. 4166.Paragraph (12): Added by Act No. 4247.

—**1977.** Paragraph (11)(f): Added the proviso.

—**1976.** Paragraph (11): Added the fourth sentence of the introductory paragraph.

—**1974.** Paragraph (10): Act No. 3533 substituted “seventy-five (75%)” for “33 1/3” preceding “percent” and added “and shall not, in any event, exceed the sum of \$15,000” following “system” in the first sentence of the second paragraph and rewrote the second sentence of that paragraph.Paragraph (11): Act No. 3533 substituted “twenty thousand (\$20,000) dollars” for “ten thousand dollars (\$10,000)” in subparagraph (b) and deleted “amount” following “principal” and substituted “10” for “15” preceding “percent” in the first sentence of subparagraph (g).

Act No. 3613 rewrote the third sentence of the introductory paragraph and added “or for the purpose of refinancing an existing first priority mortgage” following “member-grantee” and made other minor stylistic changes in the second sentence of subparagraph (e). The act also purported to amend subparagraph (b); however, the change had been previously made by Act No. 3533.

—**1970.** Rewrote paragraph (1), rewrote the second sentences of paragraphs (4), (5) and (6), added new paragraphs (8) and (9), redesignated former paragraph (8) as paragraph (10) and rewrote that paragraph, and redesignated former paragraph (9) as paragraph (11).

—**1966.** Act No. 1724 amended subdivision (8): In 4th sentence raised age limit from 60 to 65 years; enacting clause indicated that 3rd sentence was amended but language of amendment related to 4th sentence.

Act No. 1726 amended subdivision (9) generally, from beginning through paragraph (c); omitted any reference to paragraphs (d) through (f); reenacted paragraph (g); amended paragraphs (h) and (i) generally, and added paragraph (j).

Act No. 1818, §§ 1, 2 amended subdivision (9) by substituting “subdivision” for “subsection” in paragraph (a), and by amending generally paragraphs (d) through (f).

—**1964.** Act Feb. 21, 1964, No. 1086 added new subsection (9)(a)–(h). Act Apr. 6, 1964, No. 1186 added new subsection (9)(i).

Effective date of amendments

—**1984 amendment.** Act June 15, 1984, No. 4964, § 1(c), Sess. L. 1987, p. 177, provided that the change of name of the Department of Public Safety shall become effective Jan. 1, 1985.

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

—**Act Sept. 13, 1966.** Act Sept. 13, 1966, No. 1818, § 3, provided:

“The provisions of this Act [amendatory of paragraphs (a), (d), (e) and (f) of subdivision (9) of this section] shall be deemed effective from April 15, 1966, the effective date of Act No. 1726 (Bill no. 2925), Sixth Legislature, Regular Session 1966.”

Withdrawal of Retirement System reserves or funds invested in South Africa. Act Oct. 19, 1984, No. 5014, § 225(b), Sess. L. 1984, p. 371, provided:

“Any reserves or other funds of the Retirement System which are invested in South Africa or in a South African corporation, or in any United States corporation doing business with the government of South Africa on the date of enactment of this act [Oct. 19, 1984], shall be withdrawn from such investment within two years of the date of enactment.”

CROSS REFERENCES

Loan from Employees Retirement System, to be secured by mortgages on certain Government real property, for purposes of providing housing for persons of moderate income, see section 191h-1 of Title 29; and authority of Governor to issue rules and regulations in connection therewith, see section 191h-2 of such title.

ANNOTATIONS

1. Generally.
2. Mutual funds.
3. Loans to government.
4. Mortgage loans.
5. Second mortgages.
6. Repayment of loans.
7. Divestment.
8. Conflict of interest.

1. Generally.

Failure of legislature to have initially addressed a certain class of mortgages when it enacted this section did not preclude subsequent inclusion of that class by amendment. *Employees Retirement Sys. v. Government of V.I.*, 19 V.I. 539 (D.C.V.I. 1983).

Independent trustee status expressly conferred on the board of the Employees' Retirement System of the Government of the Virgin Islands in no way precluded a prospective change in the types of loans and loan eligibility set forth in this section. *Employees Retirement Sys. v. Government of V.I.*, 19 V.I. 539 (D.C.V.I. 1983).

2. Mutual funds.

If mutual fund was a corporation chartered under the laws of the United States or any state, district or territory, and was listed on a national securities exchange, an investment could be made by the Government Employees Retirement System if the necessary statutory requirements were met. 6 V.I.Op.A.G. 259.

3. Loans to government.

The Retirement System may lend funds to the Government of the Virgin Islands in return for a promissory-note of the government, but there is no necessity to secure these notes by a specified collateral and the government is not required to earmark the funds to be used for making payments on the notes. 7 V.I.Op.A.G. 62.

4. Mortgage loans.

A condominium is a home within the meaning of statute governing mortgage loans which may be made with the reserves of the Virgin Islands Employees Retirement System only if the condominium is to be used as the dwelling place of the owner. 8 V.I.Op.A.G. 13.

Provision of this section authorizing Board of Trustees of the Employees Retirement System of the Government of the Virgin Islands to promulgate rules and regulations governing mortgage loans from the system does not give the board authority to make rules which are inconsistent with the motive and intent of the enabling legislation. 8 V.I.Op.A.G. 8.

5. Second mortgages.

Employees' Retirement System may make a second priority mortgage loan only to secure an additional construction or improvement loan, and may not make a second mortgage loan for the purpose of paying off a first priority mortgage loan. 7 V.I.Op.A.G. 274.

6. Repayment of loans.

Where this section's provision for repayment of loan in installments equal to at least 15 percent of the borrower's salary was amended to substitute 10 percent for 15 percent, persons with loans on the effective date of the amendment were not entitled to decrease their repayment rate to 10 percent. 7 V.I.Op.A.G. 384.

7. Divestment.

Divestment statute does not prohibit investment in corporations which may sell products or services to private companies in South Africa, but do not deal with the Government of South Africa. 10 V.I.Op.A.G. 64.

Divestment statute is not applicable only to United States corporations who actually have offices or subsidiaries in South Africa; it is not the physical presence of an office in South Africa that is determinative, but rather the entity with which that corporation ultimately does business. 10 V.I.Op.A.G. 64.

8. Conflict of interest.

Members of the Board of Trustees of the Virgin Islands Government Employees Retirement System have an affirmative duty to avoid placing themselves in a position where personal interests may be at odds with that of the System. *Government of the Virgin Islands v. Benjamin*, 25 V.I. 191, 736 F. Supp. 1337, 1990 U.S. Dist. LEXIS 5957 (1993), *aff'd without op.*, 25 V.I. 462, 922 F.2d 831, 1990 U.S. App.

LEXIS 22894 (3d Cir. 1990).

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717a. Payment of loan after retirement

§ 717a. Payment of loan after retirement

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717a. Payment of loan after retirement / Text

Notwithstanding any provision of law to the contrary, any person who has a personal, mortgage, or mortgage chattel loan from the retirement system may upon retirement, if otherwise entitled, receive his retirement annuity, notwithstanding the fact that he may have an outstanding balance on such loan; Provided, That he agrees to have an amount equal to the amount deducted from his salary for repayment of the loan deducted from his retirement annuity and applied as payment to the outstanding balance of the loan.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717a. Payment of loan after retirement / History

—Added Nov. 3, 1983, No. 4864, § 4, Sess. L. 1983, p. 196; amended Aug. 23, 1999, No. 6289, § 10, Sess. L. 1999, p. 74; Nov. 2, 2005, No. 6794, § 13, Sess. L. 2005, p. 396.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 717a. Payment of loan after retirement / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 13, deleted “made pursuant to section 717(10), (11) or (12) of this chapter” following “retirement system” and inserted, in the first sentence, “personal, mortgage, or mortgage chattel” following “any person who has a.”

—**1999.** Deleted the second proviso.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718. Financing

§ 718. Financing

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718. Financing / Text

(a) The various obligations of the system shall be financed in accordance with actuarial reserve requirements from contributions by members, contributions by the employer, interest income, and other income accruing to the system. From time to time, the Board may actuarially determine the rate of contribution for members and employers of the system. After October 1, 2005, the system may not provide any increases in benefits to members or beneficiaries, unless the administration has identified a specific funding source and concurrently makes a provision for the funding of all future benefit improvements on sound actuarial basis in the annual budget.

(b) Each employee who is a member of the Government Employees Retirement System shall contribute a percentage of his compensation as prescribed by the Government Employees Retirement System Board of Trustees. However, the Government Employees Retirement System Board of Trustees may not increase rates, in addition to rates already in effect, by more than 3.0% over a five-year period. Each employee who is a member of the Government Employees Retirement System shall contribute a percentage of compensation as follows:

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Provided, however, that after May 23, 1980, any policeman, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal and probation officer of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, or corrections officer shall contribute ten percent of compensation; provided, further that after December 29, 1986, every eligible employee with the Virgin Islands Water and Power Authority and eligible employee working with chlorine, sewage or carcinogens who elects to participate in the early retirement program shall contribute ten percent of compensation; provided, further, the Governor and Lieutenant Governor of the Virgin Islands shall contribute nine percent (9%) of compensation effective on the date of enactment hereof, which amount shall be deposited into the Elected Governors and Lieutenant Governors Retirement Fund.

(c) The employee contribution shall be made in the form of a deduction from compensation, and shall be made notwithstanding that the compensation paid in cash to such employee shall be reduced thereby below the minimum prescribed by law.

(d) Every employee who is a member of the system shall be deemed to consent to the deduction made from his compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such employee during the period covered by

such payment, except as to the benefits provided under this chapter.

(e) A computation shall be made annually of the actuarial reserve requirements for the several annuities and benefits provided in this title for members and the beneficiaries for services rendered, and to be rendered, by the members.

(f) The employer shall make contributions which together with the members' contributions and the income of the system will be sufficient to provide adequate actuarially determined reserve for the annuities, benefits and administration of the System herein prescribed.

(g) The employer shall contribute an amount paid upon a percentage of employees compensation for pay periods starting:

Click to view table.

(h) Barring any unforeseen circumstances the employer and employee contributions shall be paid to the system within ten working days after the pay date. Any payment not made within the ten working days, must also include regular interest covering the time period that the payment remains unpaid.

(i) The amounts contributed by the employer on behalf of an employee shall not be considered as the employee's contributions for any purpose such as, but not limited to, the refund and loan provisions of this chapter.

(j) The employer shall, in addition to any other contributions and payments to the system required by law, contribute to the system such sums as may be required to compensate the system for the costs of any special early retirement program.

(k) The employer shall pay to the system the total cost of any special, early retirement program in advance of the commencement of the early retirement program. If the employer is in default of payment for any prior special, early retirement program, the system may not distribute any special early retirement benefits from any additional special, early retirement program until full payment for the previous special early retirement program is made.

(l) The System shall not pay benefits to an employee unless his and the employer's contributions adequately finance benefits and related costs provided under this chapter.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718. Financing / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Feb. 8, 1968, No. 2098, Sess. L. 1968, Pt. I, p. 9, 10; Apr. 23, 1970, No. 2700, § 12, Sess. L. 1970, p. 82; July 8, 1974, No. 3593, § 3, Sess. L. 1974, p. 190; May 23, 1980, No. 4431, § 4, Sess. L. 1980, p. 54; Oct. 23,

1980, No. 4498, § 25, Sess. L. 1980, p. 233; Oct. 20, 1981, No. 4641, Sess. L. 1981, p. 244; Dec. 29, 1986, No. 5226, § 1(c), Sess. L. 1986, p. 375; Mar. 15, 1990, No. 5522, § 1(xii), (xiii), Sess. L. 1990, p. 37; Dec. 28, 1990, No. 5666, § 4, Sess. L. 1990, p. 471; May 20, 1994, No. 5979, § 4, Sess. L. 1994, p. 71; Aug. 9, 1994, No. 6002, § 1(c), Sess. L. 1994, p. 134; Aug. 26, 1994, No. 6007, §§ 8(c), 9(d), Sess. L. 1994, pp. 157, 159; Aug. 22, 1995, No. 6075, § 7(b)(3), Sess. L. 1995, p. 197; Apr. 6, 1998, No. 6223, §§ 1, 2, Sess. L. 1998, pp. 234, 235; Aug. 23, 1999, No. 6289, § 13 3., Sess. L. 1999, p. 74; June 30, 2000, No. 6353, § 17(b), Sess. L. 2000, p. 86; Nov. 2, 2005, No. 6794, § 14 1.-4., Sess. L. 2005, pp. 396, 397; Dec. 29, 2006, No. 6905, § 5(6.), Sess. L. 2006, p. 334; Apr. 12, 2008, No. 6992, § 1, Sess. L. 2008, p. —.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718. Financing / Annotations

HISTORY

Revision note

—**1987**. In the first proviso in subsection (b), substituted “May 23, 1980” for “the date of enactment of the act adding this proviso clause”.

In the second proviso in subsection (b), substituted “December 29, 1986” for “the effective date of this act”.

Redesignated former subsection (k) as present subsection (j) in light of the redesignation of former subsection (i) as present subsection (i) by Act No. 6223.

Editor's note.

Act Nov. 23, 1999, No. 6333, § 6, Sess. L. 1999, p. 181, provided: “Any increase in government employees' retirement contributions shall be effective only for employees hired by the Government of the Virgin Islands after the enactment date of this Act.” This section of Act 6333 was originally objected to by the Governor but that objection was ultimately overridden by the Legislature.

Amendments

—**2008**. Act 6992, § 1, added subsection (g)(12).

—**2006**. Act 6905, § 5(6.), rewrote subsection (h).

—**2005**. Act 6794, § 14, in subsection (a), added “From time to time ... annual budget” following “system”; in subsection (b), added “Each employee ... five year period” at the beginning; rewrote subsection (h); and added subsection (k).

—**2000**. Subsection (b): Inserted “and probation officer” following “marshal.”

—**1999**. Subsection (l): Added.

—**1998**. Deleted “and” preceding “benefits” and inserted “and administration of the System” thereafter in subsection (f), deleted subsection (i) and redesignated former subsection (j) as present subsection (i).

—**1995.** Subsection (b): Inserted “internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department” following “Territorial Court [now Superior Court]” in the second sentence.

—**1994.** Subsection (b): Act No. 5979, inserted “and Lieutenant Governor” preceding “of the Virgin Islands” and “and Lieutenant Governors” preceding “Retirement Fund” in the second sentence.

Act No. 6002, inserted “peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals” following “Territorial Court [now Superior Court]” in the second sentence.

Act No. 6007 substituted “ten” for “eight” following “contribute” in the second sentence.

Subsection (k): Added by Act No. 6007.

—**1990.** Subsection (b): Act No. 5522 inserted “Government Employees Retirement” preceding “system” in the first sentence, added paragraphs (4) and (5) and made other minor stylistic changes.

Act No. 5666 added the third proviso.

Subsection (g): Act No. 5522 added paragraphs (8)–(11).

—**1986.** Subsection (b): Added “provided, further that after the effective date of this act every eligible employee with the Virgin Islands Water and Power Authority and eligible employee working with chlorine, sewage or carcinogens who elects to participate in the early retirement program shall contribute ten percent of compensation” following “eight percent of compensation”.

—**1981.** Subsection (b): Inserted “including a fireman employed by the Virgin Islands Port Authority” after “fireman” in the proviso.

—**1980.** Subsection (b)(3): Act No. 4431 added proviso.

Act No. 4498 inserted “marshal of the Territorial Court [now Superior Court]” following “fireman”.

—**1974.** Subsection (g)(7): Added.

—**1970.** Subsection (b): Deleted reference to 4 percent of compensation and added paragraphs (1)–(3). Subsection (g)(5): Substituted “8.21%” for “7.63%” in the second column of table. Subsection (g)(6): Added.

—**1968.** Section divided into subsections (a)–(j) and amended generally.

Effective date of amendments

—**1970.** Amendment of this section, by Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

Suspension of employer contributions; payment of suspended contributions for Interest Revenue Fund. Act May 14, 1985, No. 5060, § 201, Sess. L. 1985, p. 40, provided:

“Notwithstanding the provisions of Title 3, section 718, Virgin Islands Code, the employer contribution shall be suspended from March 31, 1985 through September 28, 1985. The employer contributions which would have been made but for the provisions of this section shall be paid to the Government Employees Retirement System, together with interest calculated at an annual rate of four percent (4%), commencing

July 1, 1986. Payment of all suspended payments and interest shall be made and are hereby appropriated from the Interest Revenue Fund. Such payment shall be made in equal monthly installments and shall be completed not later than June 30, 1988. Notwithstanding any provision of law, any amounts available in the Interest Revenue Fund shall be first expended for said payment prior to their being made available for any other purpose. Should amounts available in said Fund be inadequate to meet said payments, said payment shall be made and are hereby appropriated from any other funds available in the Treasury of the Virgin Islands.”

ANNOTATIONS

Cited. Cited in *Joseph v. Government of V.I.*, 576 F. Supp. 1335, 1983 U.S. Dist. LEXIS 10638 (D.C.V.I. 1983); *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718a. Financial obligations; government

§ 718a. Financial obligations; government

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718a. Financial obligations; government / Text

(a) Upon the basis of each annual actuarial valuation and appraisal provided for in this chapter, the Administrator, on or before the fifteenth day of September of each year shall prepare and file with the Budget Director and the Chairperson of Legislature's Committee on Finance and itemized estimate of the amounts necessary to be appropriated by the government to the Government Employees Retirement System for the next fiscal year. Such amounts shall be sufficient to provide for payment in full for (i) the estimated obligations of the government to the retirement system for such respective fiscal years; and (ii) any actual obligations of the government to the retirement system remaining unpaid from the prior fiscal year on such amount to be paid in the next fiscal year. If, the government overpaid its actual obligation to the retirement system for the prior fiscal year, such amount shall be credited as a reduction in amounts that would otherwise be estimated to be due the retirement system from the government. The estimate provided by the Administrator shall reflect the most recent data on annual salary and other related components, and be calculated in accordance with pension benefits authorized as of that time. Such estimate shall be provided by the Administrator within fifteen days of a request by the Budget Director.

(b) Such estimated amounts provided in subsection (a) of this section shall be revised to reflect updated information, including trends in salary growth and investment earnings through September thirtieth of the current fiscal year and resubmitted to the Budget Director and the Chairperson of the Legislature's Committee on Finance on or before December fifteenth of the current fiscal year. A revised actuarial estimate, including an explanation of any changes from the estimates submitted on September fifteenth of the current fiscal year, shall also accompany such re-submission.

(c) By January seventh of the current fiscal year, the Administrator shall notify the Budget Director and the Chairperson of the Legislature's Committee on Finance of his revised estimate of the government's contribution to the retirement system for the current and next fiscal years based on updated information through January thirty-first of the current fiscal year. Such notification shall be accompanied by a revised actuarial estimate, including an explanation of any changes from the estimate submitted on December fifteenth of the current fiscal year.

(d) The estimates provided in subsections (a), (b) and (c) of this section shall be accompanied by an actuarial report stating the assumptions used in calculating each of the estimates, including but not limited to:

(1) projected growth in the billable salary base from the prior fiscal year, in total and by tier for the government and instrumentalities;

(2) composition of the portfolio;

(3) return on common stock investments, expressed as a percentage;

(4) calculation of the actuarial value of common stock;

(5) return on investments other than common stock, expressed as a percentage; and

(6) itemization of the change from the government's prior year contribution, either actual or estimated, due to legislative changes in benefits, tier shift, salary base growth, investment return, and any other factors deemed appropriate for explaining such change.

(e) In addition to the above mentioned reporting requirements, the actuarial report shall also include the following information for the current fiscal year and estimated amounts for the next fiscal year.

(1) the market value and actuarial asset value of equities.

(2) a government reconciliation of the amounts paid and the final amounts for the two prior fiscal years.

(f) The system shall not provide any new increases in benefits to members or beneficiaries unless the Government has deposited the funding for the prior fiscal year into the bank account of the system and concurrently makes a provision for the funding of all future benefit improvements on a sound actuarial basis in the budget.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718a. Financial obligations; government / History

—Added Dec. 29, 2006, No. 6905, § 5(7.), Sess. L. 2006, pp. 334–336.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718a. Financial obligations; government / Annotations

HISTORY

Former section 718a relating to retroactive contributions by certain persons eligible for early retirement was derived from Act Dec. 29, 1986, No. 5226, § 2, Sess. L. 1986, p. 376 and was repealed by Act Dec. 29, 2006, No. 6905, § 5(7.), Sess. L. 2006, pp. 334–336.

Eligibility for early retirement and retroactive contributions to system of employees of Virgin Islands Water and Power Authority and Department of Public Works. Act Sept. 28, 1990, No. 5640, Sess. L. 1990, p. 350, provided:

“(a) Notwithstanding the provisions of Title 3, Section 718a, Virgin Islands Code, and Section 702–6 of the Rules and Regulations promulgated by the Board of Trustees of the Government Employees Retirement System (GERS), and certified and approved by the Governor on May 7, 1990, ‘eligible employees with the Virgin Islands Water and Power Authority’, as defined in Title 3, Section 702, subsection (x), Virgin Islands Code, and employees of the Department of Public Works who are ‘eligible employees working with chlorine, sewage, or carcinogens’, as defined in Title 3, Section 702, subsection (y), Virgin Islands Code, shall be eligible to retire under the early retirement provisions of Act No. 5522 (Bill No. 18–0172) [which amended sections 701, 702, 704–706, 715, 716 and 718 of this title], enacted February 22, 1990; provided, however, that such employees were members of the retirement system between 1965 and December 16, 1986, the date of passage of Act No. 5226 [which added this section and sections 718b–718d of this title and amended sections 702, 705, 706 and 718 of this title] and that such members be allowed to pay retroactive payments as provided under Title 3, Section 718a, Virgin Islands Code, over a period of ten (10) years after their election to participate in the early retirement program by equal installments deducted from their payroll or retirement checks biweekly as appropriate.

“(b) Of the retroactive payments required under subsection (a) of [section 1 of] this Act, (1) ‘eligible employees with the Virgin Islands Water and Power Authority’ and employees of the Department of Public Works who are ‘eligible employees working with chlorine, sewage, or carcinogens’, shall be required to pay .4 times the annual rate of compensation; and (2) the Water and Power Authority shall pay .5 times the annual rate of compensation and the Government of the Virgin Islands shall pay .5 times the annual rate of compensation for eligible employees of the Virgin Islands Water and Power Authority; and (3) the Government of the Virgin Islands shall pay 1.0 times the annual rate of compensation for employees of the Department of Public Works as provided in subsection (a) of this Act and eligible employees of the Virgin Islands Water and Power Authority that were transferred from the Department of Public Works as a result of Act No. 5365 [which amended section 551 of Title 29 and added sections 916–929 of Title 29 and section 3003a of Title 33].

“Upon notification of application for retirement by the GERS, contributions made by the Virgin Islands Water and Power Authority and the Government of the Virgin Islands shall be paid not later than 30 days after such notification. Such funds, as may be necessary shall be appropriated from the General Fund for the fiscal year ending September 30, 1990 and shall remain available until expended.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718b. Election available to eligible employees

§ 718b. Election available to eligible employees

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718b. Election available to eligible employees / Text

Notwithstanding the provisions of this chapter, participation in the early retirement program shall be voluntary for eligible employees as defined by this subchapter. Any person eligible for early retirement may elect to participate in the regular retirement program with contributions established at six percent of compensation. Should such person eligible for early retirement become a participant in the early retirement program, they shall pay the difference in contribution retroactive to December 29, 1986 or for five years, whichever is greater, or to the original date of their commencement of employment.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718b. Election available to eligible employees / History

—Added Dec. 29, 1986, No. 5226, § 2, Sess. L. 1986, p. 376; amended Aug. 4, 1987, No. 5272, § 4(c), Sess. L. 1987, p. 118; Nov. 2, 2005, No. 6794, § 15, Sess. L. 2005, p. 397.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718b. Election available to eligible employees / Annotations

HISTORY

Revision note

—**1987.** In the third sentence, substituted “December 29, 1986” for “the effective date of this act” pursuant to section 14 of Title 1.

In the first sentence, substituted “employees” for “employes” to correct a typographical error pursuant to section 14 of Title 1.

Amendments

—**2005.** Act 6794, § 15, substituted “subchapter” for “chapter” at the end of the first sentence.

—**1987.** Added “for eligible employees as defined by this chapter” following “voluntary” at the end of the first sentence.

Early Retirement Incentive, Training and Promotion Act of 1994. Act Aug. 26, 1994, No. 6007, §§ 1–7, 8(a), (b), (e)–(h), 10, Sess. L. 1994, pp. 150–159, as amended by Act Oct. 13, 1994, No. 6028, § 1(a)–(n), (p)–(s), Sess. L. 1994, p. 219; Act Dec. 30, 1994, No. 6064, §§ 3, 28, Sess. L. 1994, pp. 315, 321; Act Aug. 14, 1995, No. 6075, § 9, Sess. L. 1995, p. 198; Act Feb. 21, 1996, No. 6092, § 23, Sess. L. 1996, p. 12, provided:

“Section 1. Title. This Act [which amended sections 451a, 703, 705, 706, 718 and 731 of Title 3 and section 248 of Title 31] shall be known as the Early Retirement Incentive, Training and Promotion Act of 1994.

“Section 2. Intent and Purpose. It is the purpose of this legislation to reduce personnel expenditures by the Government of the Virgin Islands through a reduction in the size of the Government work force while avoiding layoffs. To accomplish this purpose, this legislation provides, for a limited time, a special early retirement incentive program to members of the Government Employees' Retirement System of the Government of the Virgin Islands who are eligible for retirement or who are nearing eligibility for retirement but who, without this legislation, could not, or would not be in a position to retire under the current provisions of law. At the same time it is the intent of the Legislature that the Government have an opportunity, for a period of up to six months following the effective date of retirement, to retain the services of essential government employees desiring to take advantage of the incentive but who, because of their experience and expertise, or because of the nature of their jobs, are more difficult to replace than other employees, and whose services are deemed essential to the operation of the Government. Finally, in order to accomplish the intended reduction in work force, only a limited number of positions may be filled by replacements who are not already Government employees. In enacting this legislation, full recognition is given to the fact that annuities calculated under the provisions of this Act will be adjusted to reflect retroactive pay increases, negotiated under collective bargaining agreements but not yet paid, at such time as these increases are funded and corresponding contributions are made to the Government Employees Retirement System.

“Section 3. Definitions.”

“(a) When used in this Act:

“(1) Unless otherwise, specified, or unless the context clearly requires otherwise, the terms defined in Title 3, Chapter 27, Virgin Islands Code, shall have the same meaning as therein defined.

“(2) References to section numbers shall be deemed to refer to sections of Title 3, Chapter 27, Virgin Islands Code unless otherwise specified.

“(3) The following other terms shall have the following meanings:

“(A) ‘Designated member’ means an employee designated by the appropriate executive authority to continue to provide service to the Government, notwithstanding the employee’s retirement, pursuant to and subject to the conditions of Section 5 and 6 of this Act [which are set out in this note below].

“(B) ‘Electing member’ means a member who is eligible for the benefits of this Act and who elects to retire under the provisions of this Act.

“(C) ‘Essential Employee’ means any employee whose particular skills are necessary and indispensable to the functioning of the government at the time the employee elects to retire.”

“(D) ‘Executive authority’ means:

“(i) with respect to the Executive Branch of Government, the Governor;

“(ii) with respect to the Legislative Branch of Government, the President

of the Legislature;

“(iii) with respect to the Judicial Branch of Government, the Presiding Judge of the Territorial Court [now Superior Court];

“(iv) with respect to the Virgin Islands Water and Power Authority, the Virgin Islands Port Authority, and the University of the Virgin Islands, the respective boards thereof.

“(E) ‘Government’ means the executive, legislative and judicial branches of the Government of the Virgin Islands and the Virgin Islands Water and Power Authority[,] the Virgin Islands Housing Authority, the Virgin Islands Lottery Commission, the Virgin Islands Port Authority and the University of the Virgin Islands.

“(F) A determination under this Act that a member is ‘totally and permanently disabled’ shall require the same degree of inquiry and proof of disability as is required for such a determination under Section 709 or Section 710.

“(G) For the purposes of determining eligibility under this act, years of credited service shall include all annual leave in excess of 480 hours, all sick leave as provided under Section 731, as amended by subsection (e) of Section 9 of this act [set out in this note below], and all military or other local and federal government service as provided under Section 704.

“Section 4. Early Retirement Incentive. Notwithstanding any provision of Title 3, Chapter 27, Virgin Islands Code, or any other provision of law to the contrary:

“(a) Notwithstanding the provisions of subsection (d) of Section 705, any member of the Government Employees Retirement System who has or will have a combined aggregate number of years of credited service completed, plus number of years of age attained, equal to at least seventy-five (75) years total as of December 31, 1994 may retire under the provisions of this Act notwithstanding his age without reduction of annuity. For the purposes of determining eligibility under this act, age shall be calculated pursuant to the provisions of Title 3, Section 704, subsection (g), Virgin Islands Code.

“(b) For the purposes of meeting the conditions for service retirement pursuant to Section 705, any member of the Government Employee’s Retirement System who is age fifty (50) years with ten (10) but less than thirty (30) years of credited service as of December 31, 1994 may add an additional three years to their age for the purposes of that Section.

“(c) For the purpose of computing the service retirement annuity, under Section 706 (a), for an employee electing to retire under the provisions of this Act who is eligible to retire without penalty under the provisions of Section 705, or who has already completed 30 years of service, as of December 31, 1994, and without regard to the benefit provided under subsections (a) or (b) of this section, the average compensation figure used shall be increased by four (4) percentage points, subject to the limitations of subsections (a) and (d) of Section 706.

“(d) All members electing to retire under the provisions of this Act shall file an application for an annuity pursuant to Section 705 which shall specify that the member is electing the benefits of this act. The application shall be filed no later than January 15, 1995, with the election to retire effective on January 31, 1995.

“(e) For the purposes of Title 3, Chapter 27, Virgin Islands Code, withdrawal from service by an electing member shall become effective in each case on December 31, 1994, except that upon written notification to the Legislature and the affected employees, no later than December 1, 1994, by the Commissioner of Finance that all required documentation for which the Department of Finance is

responsible cannot be completed for all members electing to retire under this Act before December 31, 1994, the effective date of retirement at the request of an employee may be extended for an additional period, which is necessary to complete the documentation plus 30 days as determined by the Commissioner, provided, however, that notwithstanding any such withdrawal from service, the executive authority may require an electing member to enter an employment contract for a period of up to one-hundred-eighty (180) days pursuant to Section 5 of the act [set out below in this note].

“Section 5. Training, Promotion and Transfer of Existing Employees; Executive Authority's Designation of Electing Members for Continued Service.

“(a) Subject to Section 6 of this Act [set out below in this note] but notwithstanding any other provision of law to the contrary, and in order to meet the stated purposes of this Act during the one-hundred-twenty-day period following enactment of this Act [August 26, 1994], the executive authority shall plan and implement a program of inter-governmental departmental transfers and promotions, together with appropriate formal or informal training programs, in order to replace electing employees and other persons leaving the service to the maximum extent practicable with other trained employees who presently hold other government positions.

“(b) If an executive authority determines, in his or its discretion, that:

“(1) an additional period of time is required beyond one-hundred-twenty days from the date of enactment of this Act to properly implement the transfer and promotion programs described in subsection (a) above; and

“(2) it is in the best interest of the government for which such executive authority has responsibility to proceed to exercise the authority granted in this subsection, then the executive authority may designate up to thirty-three (33) percent (one-third) of those electing members, who are deemed essential employees, to continue to provide services for up to one-hundred-eighty (180) days, under an employment contract, to the government after the effective date of the members' retirement, notwithstanding, that such retirement shall be considered effective for all purposes of Title 3, Chapter 27, Virgin Islands Code, as of December 31, 1994, or such other date as provided in Section 4, subsection (e) of this Act [set out above in this note]; provided, however, that any electing members who are teachers or educational administrators employed by the Department of Education shall continue to provide services, under an employment contract, to the government after the effective date of the electing member's retirement under the provisions of this act at least and until the end of the 1994–1995 school year.

“(c) No later than ninety (90) days after the date of enactment of this Act, the designation of members described in this Section shall be made by each executive authority and shall be communicated by the executive authority to every member so designated. Copies of each designation shall be sent to the Legislature, and, in the case of designation by the Governor, to the head of the department or agency by which such member is employed.

“(d) No electing member shall be designated by an executive authority pursuant to subsection (b) unless the executive authority has first determined that either:

“(1) the member has such a degree of experience and/or expertise in his or her particular position that replacing such person with another employee prior to the effective date of retirement as provided under Section 4 of this Act [set out above in this note] will not be possible without seriously compromising the ability of the organization of government by which such member is employed to perform its required duties and undertake its legally mandated responsibilities; or

“(2) the position held by the member is of a type that requires extensive training, a specific employee or, where applicable, other person, has been designated to replace the designated member, and the replacement's training will not have been completed by the date of the member's retirement. The determination of the Governor referred to in this subsection, with respect to each electing member designated, shall be made after consultation with the Director of the Office of Management and Budget and the head of each organization of government by which any electing member is employed. Each such determination shall be made separately and in writing and shall detail the reasons therefor. A copy of each determination shall be provided to the Legislature within ninety (90) days of the date after the enactment of this Act.

“(e) To assist the executive authorities in fulfilling their responsibilities under this section, no later than seventy-five (75) days from the date of the enactment of this Act, the board shall transmit to the appropriate executive authorities a list of the electing members, together with their job titles, who are employed by the branch of Government, department, agency, or other organization for which such executive authority has responsibility. At the same time, the board shall also provide the Legislature with a copy of all such lists.

“(f) Nothing in this Act shall be construed to authorize any reduction in compensation to any employee or to authorize the demotion of any employee. Any transfer to a position with the same or higher salary shall not be considered a demotion for this purpose.

“Section 6. Conditions for Early Retirement Incentives.

“(a) A designated member shall be compensated for his or her designated employment by means of an employment contract providing a level of compensation that, when added to the member's annuity, shall equal the level of the last salary received during his or her period or regular service plus ten percent of such salary based on a pro rata share of the annual salary for the period covered by the employment contract; provided, however, that in the case of teachers and educational administrators, the pro rata salary shall include all remaining compensation due for the 1994–1995 school year. Such compensation shall be in addition to the amount of the member's annuity. A designated member shall not be entitled to either sick leave or vacation leave during the designated period of employment; however, a designated member will be permitted the usual Government holidays and shall be permitted to take up to two weeks of leave without pay.

“(b) If, as a result of serious illness or injury, a designated member requires additional leave without pay, the member may apply to the executive authority. The executive authority may grant such leave if the member provides written proof of the seriousness of his or her illness or injury from a physician.

“(c) A designated member shall not be a contributor to the system during his or her period of designated employment.

“(d) A designated member, during his or her period of employment, shall be entitled to health and dental insurance on the same basis as if the member were retired and any premiums for which the member is responsible shall be deducted from the member's annuity.

“(e) Except as set forth in this subsection, every electing member who becomes a designated member shall be required to serve his or her entire period of employment. Except if a member becomes totally and permanently disabled, failure to fulfill the terms of the employment contract shall result in the retroactive cancellation of the designated member's annuity (including any reimbursement of the annuity that may be required of the member), and such retroactive readjustment of the member's salary and

system contributions, and such transfer of funds between the Government and the system as may be required in order that the member, the Government, and the system shall be in the same position they would have been in had the member not become an electing member.

“(f) Except as provided under subsection (g) of this Section, any member who elects to retire under the provisions of this Act who reenters the service of the government, either by appointment or on a contractual basis, shall have his or her annuity canceled and shall thereupon become a contributor to the system. Upon subsequent retirement, the member shall receive an annuity recalculated according to the provisions of the retirement system in effect at the date of his latest retirement based on his entire period of service rendered both before and after the date of re-employment by the government.

“(g) Notwithstanding subsection (f) of this Section, an electing member who is appointed to a cabinet level position may reenter the service as a cabinet level employee at any time, pursuant to the provisions of this subsection, and this subsection shall apply to such member rather than subsection (f). Any such member's annuity shall be suspended upon such reentry and the member shall again become a contributor to the system. Notwithstanding Section 706 (c) or any other law to the contrary, upon subsequent retirement, any member to whom this subsection applies, shall receive an annuity in an amount which is the greater of:

“(1) the annuity which was suspended upon the member's appointment; or

“(2) an annuity recalculated according to the provisions of the retirement system in effect as the date of his or her latest retirement, based on the member's entire period of service rendered before and after the date of re-employment by the Government; provided, that if such member continues in the service, or again reenters the service, in a position other than a cabinet level position, then upon subsequent retirement, the member will receive the annuity described in clause (2) of this subsection and not the annuity described in clause (1) of this subsection.

“(h) Unless inconsistent with the provisions of this Act the provisions of Title 3, Chapter 27, Virgin Islands Code, including, but not limited to section 706a and 707 thereof, shall apply to electing members.

“**Section 7.** Reduction in Work Force.

“(a) Commencing upon the effective date of this Act, the Governor shall reduce the aggregate number of filled positions in the Government of the Virgin Islands by one permanent position for each employee of the Government electing early retirement under this Act.

“(b) No later than 30 days following enactment of this Act, the governor shall provide to the Legislature the total number of filled positions in the Government of the Virgin Islands as of the date of enactment of this Act. The maximum number of persons employed by the Government of the Virgin Islands, at any time during the five years immediately following enactment of this Act, may not exceed the total number of filled positions in the Government, as the date of enactment of this Act, reduced by the number of employees electing to retire under the provisions of this Act; provided, however, that this subsection shall not preclude the Governor from filling vacancies which were created as a result of the retirement of teachers and school nurses.

“(c) Not later than six months following enactment of this Act, the executive authorities of the Government shall provide the Legislature with a list of each personnel action taken pursuant to the requirement of this Act, the number of vacancies arising, the positions which have been filled through transfers and promotions, the positions which have become vacant and which have not been filled through transfers or promotions, and the net amount saved as a result of the reduction in force of the

Government.

“(d) For the purposes of subsection (b) of this Section, designated employees provided services to the government under contract pursuant to the provisions of this Act shall not be considered part of the government work force; provided, however, that not later than six months following enactment of this Act, the executive authority shall provide the Legislature with a list of each employment contract in force for designated employees and the estimated total cost for all such contracts at their completion one year from the date of enactment of this Act.

“(e) Notwithstanding any other provision of law, no contracts for personal services that could potentially be used to circumvent, the personnel ceiling provided under subsection (b) of this section shall be entered into by the Government of the Virgin Islands.

“**Section 8.** Financing.

“(a) For each employee electing to retire under the provisions of subsections (a) and (b) of Section 4 of this Act [which is set out in this note above], the Government of the Virgin Islands shall contribute to the Government Employees Retirement System a sum equal to the employer and employee contribution that would have been made had the employee not elected to retire under the provisions of this Act, to be paid in three equal installments during Fiscal Year 1995 and quarterly during each successive fiscal year by each organization of Government, and continuing for the period that would otherwise have been required for the employee to reach the age of sixty-two (62).

“(b) For each employee electing to retire under the provisions of subsection (c) of Section 4 of this Act [which is set out in this note above], the Government of the Virgin Islands shall contribute to the Government Employees Retirement System a sum equal to the additional contribution the employer and employee would have made had the employee received a salary four percent higher during the three years used to compute the employee's “average compensation” figure, plus a sum of \$5,000 representing the present value of the additional annuity such employee will receive over the next ten years, such payment to be made in a lump sum in the fiscal year in which withdrawal from service by electing members becomes effective.

“(d) For the Fiscal Year commencing October 1, 1994, there is hereby appropriated from the General Fund of the Treasury of the Government of the Virgin Islands to the Government Employees Retirement System, the sum of six million, three hundred twenty-four thousand, five hundred sixty-two dollars (\$6,324,562) to implement the provisions of this Section of which \$100,000 is for the additional administrative costs of the Government Employees Retirement System. Any funds not required to implement the provisions of this act in Fiscal Year 1995 shall be available to implement the provisions of this act in the following fiscal year.

“(e) No later than May 30, 1995, the Government Employees Retirement System shall report to the Legislature the number of employees who elected to retire under the provisions of Section 4 of this Act [which is set in this note above] and the number of additional pay periods each such employee would have been required to work in order to reach the age of sixty-two. The report shall include an estimate of the contribution to the system that will be required under the provisions of this Section during the current fiscal year and in each succeeding fiscal year until all such pay periods will have been completed.

“(f) Notwithstanding any other provision of law, no contracts for personal services that could potentially be used to circumvent the personnel ceiling provided under Section 7(b) of this Act [which is set out in this note above] shall be entered into by the Government of the Virgin Islands. No later than May of each year following the effective date of this Act and continuing until such time as all electing members would have reached the age of sixty-two, the Government Employees Retirement System shall

report to the Legislature any adjustments to the estimates provided under subsection (d) of this Section necessitated by any changes in Section 718 contribution percentages enacted subsequent to enactment of this Act or to correct any errors in original estimates.

“(g) Any member electing to retire under the provisions of this Act shall not be eligible for any additional loans under the provisions of Section 717, of Title 3, Virgin Islands Code, unless application for such loan was submitted prior to enactment of this Act. Provided, however, members retiring under the provisions of this Act shall be eligible for loans under Section 717 as any other annuitant after retirement.

“(h) For the fiscal year commencing October 1, 1994, there is hereby appropriated from the General Fund of the treasury of the Virgin Islands the sum of \$100,000 to the Government Employees Retirement System for the purpose of providing to the Legislature, no later than December 31, 1995, a study of alternative retirement formulas that would provide new members of the system with a more equitable system of contributions and benefits, such study to include defined benefit contribution approaches.

“**Section 10.** Excluded Members. Under the provisions of the Early Retirement Incentive, Training and Promotion Act of 1994, only active employees in the service of the Government of the Virgin Islands shall be eligible for benefits. Active employees as used in this section, are those employees matriculating in government service, and actively contributing to the system or any employee who has worked for twenty (20) years or more and whose equivalent contributions are still retained by the Government Employees Retirement System.

“**Section 11.** Notwithstanding the provisions of Title 3, Sections 717 and 717a, Virgin Islands Code, or any other law, any member electing to retire under the provisions of this Act shall not have deducted from his annuity for the repayment of any outstanding loans authorized under Title 3, Section 717, Virgin Islands Code, an amount greater than that amount which is deducted from his salary at the time his retirement becomes effective.

“**Section 12.** In implementing the provisions of this Act the responsible executive authorities shall take into account the following:

“(a) It is the intent of the Legislature that contracts entered into between the government and designated employees shall incorporate the terms and conditions of collective bargaining agreements under which the retiring employee worked prior to retirement, including continued union membership, except as specifically excepted in this act.

“(b) Letters of Application filed pursuant to the provisions of this act shall serve the same purpose as the letter of resignation required to initiate the (NOPA) Notice of Personnel Action process.

“(c) The Government Employees Retirement System shall provide employees electing to retire under the provisions of this act, with a determination of their best option rather than requiring such employees to make a selection between options.

“(d) Notwithstanding the provisions of Section 704 of Title 5, Virgin Islands Code, any currently active member of the system who has other continuous temporary service for and in the Virgin Islands (whether for the territorial or Federal Government) shall receive credit for such prior service by contributing to the system the sum of \$100 for each year of such service.

“(e) Any employee electing to retire under the provisions of this act whose eligibility for service credit under subsection (i) of Section 704 is determined subsequent to the effective date of this act, shall be permitted to make the contributions to the system required by this subsection without regard to the provision requiring that all payments be made prior to the employee's retirement.”

Exemptions from rehiring limitations. Act Oct. 13, 1994, No. 6028, § 2, Sess. L. 1994, p. 223; as amended by Act Nov. 3, 1994, No. 6037, § 4, Sess. L. 1994, p. 266; provided:

“Notwithstanding any other provisions of law to the contrary, government hospital facilities, the Housing Authority, the Virgin Islands Lottery, and all other independent instrumentalities of the Government of the Virgin Islands, are exempt from the rehiring limitations contained in this act [section 5(f) and (g) of Act No. 6007, which is set out as a note above].”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718c. Transfers of eligible employees

§ 718c. Transfers of eligible employees

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718c. Transfers of eligible employees / Text

(a) A person eligible for early retirement, transferred to a position which does not qualify as a person so eligible after at least ten years of service as a person so eligible may elect to continue to contribute at the additional rate of compensation, for which he shall receive full benefits after twenty years of service or he may elect to pay six percent of compensation with reimbursement or credit for overpayment, but shall not be eligible for early retirement.

(b) A person in a position which does not qualify as a person eligible for early retirement who is transferred to a position so eligible may elect to contribute at the additional rate of compensation for which he shall receive full benefits after twenty years of credited service, provided that such employee has been eligible and paying at the higher rate for at least ten years. Such employee shall be required at the time he becomes eligible for early retirement at the time he elects to become such pursuant to section 718b of this chapter, to pay retroactive to December 29, 1986 or for credited service to the time he makes such election to pay the difference between the rates for the time he seeks credit.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718c. Transfers of eligible employees / History

—Added Dec. 29, 1986, No. 5226, § 2, Sess. L. 1986, p. 376.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718c. Transfers of eligible employees / Annotations

HISTORY

Revision note

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—1987. In the second sentence of subsection (b), substituted “December 29, 1986” for “the date of this act” pursuant to section 14 of Title 1.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718d. Persons eligible for early retirement; definition

§ 718d. Persons eligible for early retirement; definition

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718d. Persons eligible for early retirement; definition / Text

For the purposes of sections 718a-718c of this chapter “person eligible for early retirement” means a policeman, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, corrections officer, eligible employee with the Virgin Islands Water and Power Authority or eligible employee working with chlorine, sewage or carcinogens as defined in section 702 of this chapter.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718d. Persons eligible for early retirement; definition / History

—Added Dec. 29, 1986, No. 5226, § 2, Sess. L. 1986, p. 377; amended Aug. 9, 1994, No. 6002, § 1(d), Sess. L. 1994, p. 134; Aug. 22, 1995, No. 6075, § 7(b)(4), Sess. L. 1995, p. 197.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 718d. Persons eligible for early retirement; definition / Annotations

HISTORY

Amendments

—1995. Inserted “internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department” following “Territorial Court [now Superior Court]”.

—1994. Inserted “peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals” following “Territorial Court [now Superior Court]”.

**TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits /
§ 719. Accounting**

§ 719. Accounting

**TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits /
§ 719. Accounting / Text**

An adequate system of accounts and records shall be established and maintained for the system that will give effect to the requirements of this chapter. This system shall be integrated, to the extent possible, with the accounts, records and procedures of the employer to the end that the same shall operate most effectively and at minimum expense, and that duplication of records and accounts may be avoided.

All assets of the system shall be credited according to the purposes for which they are held in the following designated reserve accounts:

(1) *Members' Contribution Reserve.* The amounts contributed by the members to this system after the date of establishment together with any amounts contributed by the members to any superseded retirement fund or system which has been transferred to this system as provided in section 721 of this title, shall be credited to this reserve. An individual account shall be maintained for each member, to which shall be credited the amounts of his contributions.

Upon the granting of a service retirement annuity, disability annuity or duty-connected death annuity the accumulated contributions to the credit of the member concerned shall be transferred from this reserve to the retirement reserve. Refund and death benefit payments representing member contributions shall be charged to this reserve.

(2) *Employer's Contribution Reserve.* The amounts contributed by the employer under the provisions hereof, for service retirement annuity, disability annuities, duty-connected death annuity and death benefits shall be credited to this reserve. All amounts transferred to this system from any superseded fund or system as provided in section 721 of this title, over and above the amounts of the member's contribution credits in such superseded fund or system, shall be credited to this reserve. Death benefit payments from employer's contributions shall be charged to this reserve.

Upon the granting of a service retirement annuity, duty disability annuities or duty-connected death annuity, an amount representing the excess of the actuarial value of the annuity over the accumulated contributions of the member shall be transferred from this reserve to the retirement reserve. If in any year the retirement reserve is insufficient to cover the reserves for the various annuities being paid by the system, the amount of any deficiency shall be transferred from this reserve to the retirement reserve.

(3) *Retirement Reserve.* Upon the granting of a service retirement annuity, disability annuities or duty-connected death annuity, the accumulated contributions of the member and an amount representing the excess of the actuarial value of the annuity over such accumulated contributions, shall be transferred to this reserve from the members' contribution reserve and employer's contribution reserve, respectively. All payments on account of any such annuity and death benefit payment on account of death of a retired member, shall be charged to this reserve. All payments on account of pensions and benefits granted by the superseded retirement fund, as provided in section 721 of this title shall be charged to this reserve, and such pensions and benefits shall be an obligation of this reserve.

All income from investments including gains on investment transactions shall be credited to this reserve. All losses on investment shall be charged to this reserve.

Any excess balance in this reserve, as determined by actuarial valuation as of the close of any fiscal year, shall be applied to reduce the employer's contributions for membership service for the fiscal year next following the date of such valuation by an adjustment in the employer's contribution rate. Any deficiency in this reserve shall be removed by an increase in the amount of employer's contribution rate and shall be removed by a transfer from the employer's contribution reserve.

(4) *Administration Expense Account.* All amounts contributed by the employer and employee for the expense of administration of the system shall be credited to this account. All administrative expenditure shall be charged to this account. The Legislature shall approve the annual operating budgets for the system, and shall provide for the employer's contribution to the system in the yearly budget.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 719. Accounting / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Apr. 6, 1998, No. 6223, § 3, Sess. L. 1998, p. 235.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 719. Accounting / Annotations

HISTORY

Amendments

—**1998.** Paragraph (4): Inserted “and employee” following “employer” in the first sentence.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits /

§ 720. Obligations of employer

§ 720. Obligations of employer

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 720. Obligations of employer / Text

It shall be the duty of the employer to provide the Board with records concerning the periods of service, dates of birth, compensation, new entrants into service, deaths, withdrawals and such other data on the employees as is necessary for the proper and effective operation of the system in accordance with the provisions hereof.

It is the intention of this chapter that the payment of the required contributions by the employer and all annuities and benefits granted under the provisions of this chapter are hereby made obligations of the employer to the extent specified herein.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 720. Obligations of employer / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Apr. 6, 1998, No. 6223, § 4, Sess. L. 1998, p. 235.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 720. Obligations of employer / Annotations

HISTORY

Amendments

—**1998.** Deleted “suitable quarters for offices of the Board and to furnish” following “to provide” in the first paragraph and inserted “and” preceding “all annuities” and deleted “and all expenses in connection with the administration and operation of the system” preceding “are hereby made” in the second paragraph.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 721. Superseded retirement funds or systems

§ 721. Superseded retirement funds or systems

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 721. Superseded retirement funds or systems / Text

Effective as of October 1, 1959, there shall be transferred to this system all moneys, securities, loans receivable and other property to which title is held under applicable legislation relating to the existing retirement funds. The trustees of such retirement funds are hereby authorized to make such transfer.

The amounts of contribution credits in the accounts of the employees in the aforesaid retirement funds shall be credited to them on the books of the system created by this chapter, and shall be subject to all provisions and conditions of this chapter. Any amounts remaining, after such contribution credits have been made, shall be credited to the Employer's Contribution Reserve as provided in section 719 of this title.

Any pensions or benefits being paid by the aforesaid funds shall continue to be paid by the system. Claims for benefits pending at the date of establishment shall be granted in accordance with the aforesaid legislation. Claims for pensions and benefits arising on and after the date of establishment shall be granted in accordance with the provisions of this chapter.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 721. Superseded retirement funds or systems / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 721. Superseded retirement funds or systems / Annotations

HISTORY

Ratification of certain payments and loans. Act April 21, 1960, No. 534, Sess. L. 1960, p. 39, provided:

“Whereas the Retirement Ordinances of the former Municipality of St. Thomas and St. John and Municipality of St. Croix were in effect until July 21, 1955, the date of the completion of the reorganization of the Government of the Virgin Islands under Executive Order No. 9; and

“Whereas no new Retirement Act was enacted until Act No. 479 (Bill no. 912) Third Legislature, Regular Session, 1959, approved June 29, 1959; and

“Whereas the Government of the Virgin Islands in the interim between July 21, 1955, to October 1, 1959, continued in good faith to make certain expenditures from the Retirement Fund for annuities and loans:

Be it enacted by the Legislature of the Virgin Islands:

“Section 1. All payments of retirement benefits made from the Retirement Fund to persons who did not accrue rights and credits prior to July 21, 1955, under the provisions of subsection 9(a) of the St. Croix Retirement Ordinances and section 6 and subsection 6(a) of the St. Thomas and St. John Retirement Ordinances, provided they were otherwise proper, be and the same are hereby approved,

ratified and confirmed.

“**Section 2.** All loans made to members of the Retirement System from the Retirement Fund subsequent to July 21, 1955, provided they were otherwise proper, be and the same are hereby approved, ratified and confirmed.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 722. Vested interest of employees; effect

§ 722. Vested interest of employees; effect

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 722. Vested interest of employees; effect / Text

Each member shall, by virtue of the payment of contributions to this system, receive a vested interest in such contributions, and in consideration of such vested interest shall be conclusively deemed to undertake and agree to pay the same and to have them deducted from his compensation as herein provided.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 722. Vested interest of employees; effect / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 722. Vested interest of employees; effect / Annotations

ANNOTATIONS

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 723. Annuity and benefit payments

§ 723. Annuity and benefit payments

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 723. Annuity and benefit payments / Text

The right of any member or other beneficiary to any annuity, benefit or refund shall accrue as of the date of establishment.

Except as herein specifically otherwise provided, any annuity provided herein shall be payable for life in equal semimonthly installments from the beginning date thereof as fixed by the Administrator, on the fifteenth and last day of each month, first payment to be due as of October 15, 1959; Provided, That for the purpose of effectuating administration, a small pro rata amount may be paid for part of the month when the annuity or benefit payment begins after the first day of the month, or ends before the last day of the month.

No annuity or benefit shall be increased, decreased, revoked or repealed, except for error, or where specifically otherwise provided by this chapter.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 723. Annuity and benefit payments / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; Apr. 22, 1960, No. 535, Sess. L. 1960, p. 55.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 723. Annuity and benefit payments / Annotations

HISTORY

Amendments

—1960. Changed manner of paying annuity to semimonthly on the fifteenth and last days of each month, instead of monthly at the end of the month.

ANNOTATIONS

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994); *Fuentes v. Fuentes*, 41 V.I. 86, 1999 V.I. LEXIS 25 (Terr. Ct. St. C. 1999).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 724. Penalties for fraud; adjustment of changes or errors in records

§ 724. Penalties for fraud; adjustment of changes or errors in records

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 724. Penalties for fraud; adjustment of changes or errors in records / Text

(a) Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record of this system, in an attempt to defraud the system, is guilty of a felony, and on conviction shall be fined not less than \$25,000 nor more than \$100,000 and imprisoned not less than five years, without suspension, modification, or revocation of the sentence prescribed

herein, nor more than ten years.

(b) Whenever any act of or attempt to commit fraud is discovered, the Administrator or his designee, shall transmit all evidence of the crime to the Department of Justice, Office of the Attorney General for investigation and prosecution.

(c) Should the fraudulent manipulation of the records result in any member's or beneficiary's receiving from the system more or less than he would have been entitled to receive had the records been correct, the Board shall correct the error and, as far as practicable, shall adjust future payments in a manner that the actuarial equivalent of the annuity or benefit that the member or beneficiary was correctly entitled to receive, shall be paid.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 724. Penalties for fraud; adjustment of changes or errors in records / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Nov. 2, 2005, No. 6794, § 16, Sess. L. 2005, p. 397.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 724. Penalties for fraud; adjustment of changes or errors in records / Annotations

HISTORY

Amendments

—2005. Act 6794, § 16, rewrote the section.

ANNOTATIONS

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725. Exemption of rights from legal process; unassignability

§ 725. Exemption of rights from legal process; unassignability

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725. Exemption of rights from legal process; unassignability / Text

(a) The rights of a person to any annuity or benefit or right accrued or accruing to any person under the provisions of this chapter and the various moneys in the system created by this chapter, are hereby exempted from levy and sale, garnishment, attachment, or any other legal

process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided.

(b) Notwithstanding subsection (a) of this section, the rights and benefits provided in this chapter are assignable only pursuant to actions for the support of a child, spouse, or other dependent, as ordered by any court of competent jurisdiction.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725. Exemption of rights from legal process; unassignability / History

—Added June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92; amended Nov. 2, 2005, No. 6794, § 17, Sess. L. 2005, p. 398.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725. Exemption of rights from legal process; unassignability / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 17, designated the previous language as subsection (a) and added subsection (b).

ANNOTATIONS

1. Attachment.
2. Assignment of benefits.

1. Attachment.

Retirement benefits of public employees are exempt from attachment by a judgment creditor, unless the applicant makes a showing that he or she is a spouse, beneficiary or legal dependent of the employee. 9 V.I.Op.A.G. 122.

Retirement benefits, i.e., periodic annuity payments, may be attached to satisfy a child support obligation. Government of the Virgin Islands ex rel. Albany v. Andrews, 24 V.I. 34, 1988 V.I. LEXIS 40 (Terr. Ct. St. C. 1988).

Accumulated retirement contributions of public employee may not be attached to secure satisfaction of a judgment for child support arrearages. Government of the Virgin Islands ex rel. Albany v. Andrews, 24 V.I. 34, 1988 V.I. LEXIS 40 (Terr. Ct. St. C. 1988).

2. Assignment of benefits.

First section of law creating government employees retirement system, stating that the system was created for the employees and their dependents and beneficiaries for the payment of benefits to the employees and their dependents and beneficiaries and for the purpose of, among other things, enabling the employees to accumulate reserves for themselves and their dependents and beneficiaries to provide

for old age, retirement, death and disability, evinces clear and indisputable intent to protect family and dependents of a pensioner as well as the pensioner, and legislature did not intend to exempt pension benefits from legal process to enforce or protect the rights of the pensioner's dependents or beneficiaries when it enacted, in the same pension law, a provision stating that the benefit rights and monies could not be assigned. *Government of V.I. ex rel. Hodge v. Hodge*, 14 V.I. 438, 1977 U.S. Dist. LEXIS 6028 (D.C.V.I. 1977).

Assignment of pension benefits for support of assignor's children following divorce was valid and enforceable, and income from the pension could be reached by attachment, levy, garnishment or other court order for the support or benefit of a spouse, beneficiary or dependent of the pensioner and was not protected by section providing that pension benefits may not be assigned. *Government of V.I. ex rel. Hodge v. Hodge*, 14 V.I. 438, 1977 U.S. Dist. LEXIS 6028 (D.C.V.I. 1977).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725a. Increase in pensions, effective July 1, 1956

§ 725a. Increase in pensions, effective July 1, 1956

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725a. Increase in pensions, effective July 1, 1956 / Text

An increase of ten (\$10.00) dollars a month is hereby authorized and granted to each pensioner of the Government of the United States Virgin Islands who is a former Government Employee not covered under the Retirement Law of the Municipality of Saint Thomas and Saint John or the Municipality of Saint Croix. The Commissioner of Finance is hereby authorized to pay this increase from the Retirement Fund effective July 1, 1956.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725a. Increase in pensions, effective July 1, 1956 / History

—Apr. 17, 1956, No. 76, Sess. L. 1956, p. 48.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 725a. Increase in pensions, effective July 1, 1956 / Annotations

HISTORY

Revision note

—**1995.** Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” for purposes of clarity, pursuant to section 14 of Title 1.

Codification. Section is derived from Act Apr. 17, 1956, No. 76, Sess. L. 1956, p. 48 and not from Act June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 726. Cost-of-living bonus for pensioners, effective July 1, 1957

§ 726. Cost-of-living bonus for pensioners, effective July 1, 1957

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 726. Cost-of-living bonus for pensioners, effective July 1, 1957 / Text

Each former official and employee of the Government of the United States Virgin Islands, or of the Municipality of Saint Thomas and Saint John or of the Municipality of Saint Croix, who is receiving a pension of less than seventy-five (\$75.00) dollars a month from the Government of the United States Virgin Islands by virtue of any retirement law or by special legislation is hereby granted a cost-of-living bonus of ten dollars per month, effective July 1, 1957.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 726. Cost-of-living bonus for pensioners, effective July 1, 1957 / History

—June 5, 1957, No. 171, § 1, Sess. L. 1957, p. 68.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 726. Cost-of-living bonus for pensioners, effective July 1, 1957 / Annotations

HISTORY

Revision note

—1995. Substituted “Government of the United States Virgin Islands ” for “Government of the Virgin Islands” for purposes of clarity, pursuant to section 14 of Title 1.

Codification. Section is derived from Act June 5, 1957, No. 171, § 1, Sess. L. 1957, p. 68, and not from Act June 24, 1959, No. 479, § 1, Sess. L. 1959, p. 92.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 727. Cost-of-living bonus for pensioners, effective July 1, 1961

§ 727. Cost-of-living bonus for pensioners, effective July 1, 1961

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 727. Cost-of-living bonus for pensioners, effective July 1, 1961 / Text

Subject to the limitation set forth below, every person who is now receiving or may hereafter

receive an annuity or a pension from the Government of the United States Virgin Islands, by virtue of any retirement law or by special legislation, is hereby granted a cost-of-living bonus of \$10 per month, effective on and after July 1, 1961; Provided, however, That this cost-of-living bonus shall be in addition to the cost-of-living bonus authorized by section 726 of this title; And provided further, That in no case shall any annuity or pension hereby affected plus the bonus heretofore and herein granted exceed \$100 per month. In the cases of persons now receiving or who may hereafter receive an annuity and a special pension, the amounts of such annuity and special pension shall be combined for the purpose of determining eligibility for this cost-of-living bonus. In such cases, the total cost-of-living bonus shall not exceed \$10, and shall be paid from the Pension Fund. The cost-of-living bonus of \$10 per month herein authorized shall not be applicable to pensions granted by special legislation approved on and after January 1, 1962.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 727. Cost-of-living bonus for pensioners, effective July 1, 1961 / History

—Added June 20, 1961, No. 771, § 1, Sess. L. 1961, p. 211; Mar. 5, 1962, No. 825, Sess. L. 1962, p. 58.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 727. Cost-of-living bonus for pensioners, effective July 1, 1961 / Annotations

HISTORY

Revision note

—1995. Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” for purposes of clarity, pursuant to section 14 of Title 1.

Amendments

—1962. Added sentence excluding applicability of \$10 cost-of-living bonus to pensions granted by special legislation approved on and after Jan. 1, 1962.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 728. Cost-of-living bonus for pensioners, effective July 1, 1966

§ 728. Cost-of-living bonus for pensioners, effective July 1, 1966

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 728. Cost-of-living bonus for pensioners, effective July 1, 1966 / Text

Every person on July 1, 1966, who is receiving or who after July 1, 1966, may receive an

annuity from the Government of the United States Virgin Islands by virtue of any retirement law and every person who, prior to January 1, 1966, received a pension from said Government by virtue of special legislation, including in both instances cost-of-living bonuses and increases heretofore granted, is granted a cost-of-living bonus as follows:

(a) Every person receiving such annuity or pension not in excess of \$75 per month is granted a bonus of \$10 per month; and

(b) Every person receiving such annuity or pension in excess of \$75 per month is granted a bonus of \$15 per month.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 728. Cost-of-living bonus for pensioners, effective July 1, 1966 / History

—Apr. 4, 1966, No. 1673, § 1, Sess. L. 1966, p. 139.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 728. Cost-of-living bonus for pensioners, effective July 1, 1966 / Annotations

HISTORY

Revision note

—1995. Substituted “Government of the United States Virgin Islands” for “Government of the Virgin Islands” for purposes of clarity, pursuant to section 14 of Title 1.

Effective date.

Act Apr. 4, 1966, No. 1673, § 4, Sess. L. 1966, p. 139, provided: “This Act [adding provisions of this section] shall become effective on July 1, 1966”.

Persons receiving annuity and pension. Act April 4, 1966, No. 1673, § 2, Sess. L. 1966, p. 139, provided:

“**Section 2.** In the case of any person receiving or who hereafter may receive both an annuity and a special pension, the amounts of such annuity and such pension shall be combined for the purpose of determining eligibility for the bonus granted by this Act [adding provisions of this section]. Where such person is eligible for such bonus, the increase shall be made to the pension.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729. Supplementary annuity to employee annuitants

§ 729. Supplementary annuity to employee annuitants

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits /

§ 729. Supplementary annuity to employee annuitants / Text

(a) Employees who retired on service retirement annuity prior to July 1, 1970, who were at least 55 years of age at date of retirement shall be entitled to receive a supplementary annuity under this section.

(b) The Board may set cost-of-living increases for annuitants and pensioners and determine when the annuity should be paid on the basis of the most recent actuarial valuation, the Consumer Price Index, or other economic studies or evaluations that the Board may determine are relevant.

(c) In the case of a member on retirement who is receiving, in addition to the retirement annuity from this system, a special pension grant from the government not paid by the retirement system, the following conditions shall govern:

In the case of such retired member, payments on the supplementary annuity herein provided shall be deferred until the date when the retirement annuity payment being made by the system plus the total accumulation of supplementary annuity additions thereon become equal to the sum of (1) the retirement annuity payable by the system and (2) the amount of the special pension. Thereafter, the supplementary annuity additions shall become payable to such retired member at the rate herein stated based upon the original grant of the retirement annuity by the system as in the case of other retired members who receive no special pension.

(d) In the case of members on disability retirement, the increase shall be 1 percent of the disability annuity times the number of full years that he has been in receipt of such annuity prior to his attainment of age 60, and 1 ½ percent of the disability annuity for each year after attainment of such age.

(e) The supplementary annuity payable under this section shall be charged to a retired employees supplementary annuity reserve. This reserve shall be credited with investment earnings above 4 percent per annum, as established and earned by the system in each fiscal year to fund these annuities.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729. Supplementary annuity to employee annuitants / History

—Added Apr. 23, 1970, No. 2700, § 13, Sess. L. 1970, p. 83; amended Dec. 2, 2005, 02, No. 6794, § 18, Sess. L. 2005, p. 398.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729. Supplementary annuity to employee annuitants / Annotations

HISTORY

Amendments

—**2005.** Act 6794, § 18, rewrote subsection (b).

Effective date.

Effective date of Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729a. Cost-of-living increase for certain annuitants and pensioners

§ 729a. Cost-of-living increase for certain annuitants and pensioners

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729a. Cost-of-living increase for certain annuitants and pensioners / Text

Every person who is receiving an annuity computed pursuant to the retirement law in existence prior to July 1, 1970, or who is receiving a special pension (regardless of when granted), is hereby granted a cost-of-living increase of ten percent (10%) in the amount of his annuity or pension; Provided, That no pension increase shall be granted to a person who is also receiving a retirement annuity, but said annuity shall be increased if it qualified for same hereunder.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729a. Cost-of-living increase for certain annuitants and pensioners / History

—Added July 8, 1974, No. 3601, Sess. L. 1974, p. 198.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729a. Cost-of-living increase for certain annuitants and pensioners / Annotations

HISTORY

Cost-of-living increase; minimum annuity—1980. Act May 23, 1980, No. 4436, Sess. L. 1980, p. 58, provided:

“**Section 1. (a)** Notwithstanding any other provision of law, and in addition to the increases granted by Act No. 3944, as amended by Act No. 3963, and by Act No. 4132, every person who is receiving an annuity computed pursuant to the retirement law in existence prior to March 31, 1980, or who is receiving a special pension (regardless of when granted), is hereby granted a cost-of-living increase of twelve and

one-half percent (12.5%) in the amount of his annuity or pension; Provided, That no pension increase shall be granted to a person who is also receiving a retirement annuity, but said annuity shall be increased if it qualified for same hereunder.

“(b) The special pension or annuity increases provided for in subsection (a) of this section shall become effective on April 1, 1980.”

Section 2. There is appropriated to the Special Pension Fund from available funds in the Treasury of the Virgin Islands for the fiscal year ending September 30, 1980, the sum of \$9,145.20 for the purpose of funding the special pension increases granted pursuant to section 1 of this act.”

—1977. Act Mar. 28, 1977, No. 3944, § 1, Sess. L. 1977, p. 16, as amended by Act Apr. 22, 1977, No. 3963, Sess. L. 1977, p. 39, provided:

“(a) Notwithstanding the provisions of any law to the contrary and in accordance with Act No. 3915, which provides an appropriation for the purpose hereinafter set forth, every person receiving a special pension or receiving an annuity pursuant to the retirement act for government employees in existence prior to July 1, 1970, is hereby granted a cost-of-living increase, effective April 1, 1977, which increase shall be equal to 15 percent of the amount of such annuity or pension.

“(b) Any annuity authorized after July 1, 1970, shall be increased by ten percent provided that if an annuitant receives an amount less than \$100 in any single regular payment the increase shall be 15%.

“(c) Effective April 1, 1977, the minimum annuity shall be increased from \$1,800 to \$2,400 per annum, and Title 3, section 706, paragraph (a) of the Virgin Islands Code is amended by striking the figure \$1,800 and inserting in lieu thereof the figure \$2,400.”

Increase in annuities or pensions—Generally. Act Dec. 30, 1994, No. 6064, § 1, Sess. L. 1994, p. 315, provided:

“Notwithstanding any other provision of law to the contrary, and in addition to any other increases granted by law, every person who is receiving an annuity or pension from the Government of the Virgin Islands, or who is receiving a special pension, regardless of when granted, from the Government of the Virgin Islands, and who retired prior to December 31, 1991, is granted an increase in benefits as follows:

“(a) Every person receiving an annuity or pension of \$700.00 or more per month is hereby granted an increase of 3%;

“(b) Every person receiving an annuity or pension of \$500.00 to \$699.99 per month is hereby granted an increase of 4%;

“(c) Every person receiving an annuity or pension of less than \$ 500.00 per month is hereby granted an increase of 6%;

“Any person receiving both a pension and an annuity pursuant to Title 3, section 701, et seq. of the Virgin Islands Code, the Government Employees' Retirement System, and qualifying for an increase under this section, shall receive the increase in either their pension or annuity, whichever is larger, but not both.”

—**Retroactivity of increases.** Act Dec. 30, 1994, No. 6064, § 2, Sess. L. 1994, p. 315, provided that the increase in benefits granted pursuant to section 1 of the act, which is set out as a note above, shall be retroactive to October 1, 1994.

ANNOTATIONS

1. Applicability of increase.

1. Applicability of increase.

Section 1(b) of Act No. 3944, as amended by Act No. 3963, giving government retirees a cost of living increase due to effect of inflation on persons limited to retirement income is applicable to employees not yet retired but who retire in the future, in absence of definitive statement to the contrary by the legislature. 8 V.I.Op.A.G. 118.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729b. Annual bonus payment

§ 729b. Annual bonus payment

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729b. Annual bonus payment / Text

(a) Subject to subsection (c), the System shall make an annual bonus payment from monies paid to the system under 32 VIC § 246(j) to annuitants and pensioners who meet the requirements prescribed in subsection (b).

(b) To qualify for the bonus payment established in subsection (a), an annuitant or pensioner must be:

(1) At least 60 years of age;

(2) On the systems' retiree payroll for at least one year; and

(3) Eligible to receive a cost of living increase by July 15 of the year in which the bonus payment is made.

(c) (1) The annual bonus payment may not be counted towards the maximum annual service annuity permitted by law for any service annuity.

(2) Subject to subsection (d), annuitants and pensioners shall receive an equal amount based on the total amount received by the system pursuant to 32 V.I.C., § 246(j).

(3) The annual bonus payment must be received by eligible annuitants and pensioners by September 30 each year.

(d) The annual bonus payment established in subsection (a) is subject to the availability of funds. Whenever the system does not receive sufficient funds from the annual contribution from the Lottery, the system is not obligated to pay the annual bonus payment for the year in which

the contribution is deficient.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 729b. Annual bonus payment / History

—Added June 24, 2009, No. 7070, § 1, Sess. L. 2009, p. —.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 730. Automatic increase in service or disability retirement annuity

§ 730. Automatic increase in service or disability retirement annuity

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 730. Automatic increase in service or disability retirement annuity / Text

Any member upon withdrawal from service on or after July 1, 1970, and retiring on a service or disability retirement annuity, shall be entitled to an annual increase in his basic retirement annuity as defined herein while he is in receipt of such annuity.

(a) The term “basic annuity” shall mean the service retirement annuity or disability annuity of the amount fixed and payable at date of retirement of the member.

(b) The Board may set cost-of-living increases for annuitants and pensioners and determine when the annuity should be paid on the basis of the most recent actuarial valuation, and the Consumer Price Index.

(c) The annual increase in the case of a disability annuity shall be 1 percent per year prior to the member's attainment of age 60 and 1 ½ percent per year thereafter.

(d) [Deleted.]

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 730. Automatic increase in service or disability retirement annuity / History

—Added Apr. 23, 1970, No. 2700, § 14, Sess. L. 1970, p. 84; amended Nov. 2, 2005, No. 6794, §§ 19, 20, Sess. L. 2005, p. 398.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 730. Automatic increase in service or disability retirement annuity / Annotations

HISTORY

Amendments

—2005. Act 6794, § 19, rewrote subsection (b). Act 6794, § 20, deleted subsection (d).

Effective date.

Effective date of Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

ANNOTATIONS

Cited. Cited in *Molloy v. Monsanto*, 30 V.I. 164, 1994 U.S. Dist. LEXIS 8445 (D.C.V.I. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 731. Accumulated sick leave

§ 731. Accumulated sick leave

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 731. Accumulated sick leave / Text

(a) Any member having accumulated and unused sick leave at date of retirement shall be entitled to service credit towards the service retirement annuity to which the member may be entitled. The credit for accumulated and unused sick leave shall be 1 month for any period of 11 to 20 days inclusive of such leave and ½ month for any period of 5 to 10 days inclusive except that the credit for accumulated and unused sick leave shall be one year for any period consisting of 2080 hours. Less than 5 days of such unused sick leave shall not be considered for such credit.

(b) If at the date of retirement a member is indebted to the Government for advanced or unearned sick leave, ten (10%) percent of the amount of each basic annuity payment shall be deducted until the member shall have reimbursed the Government in full for the value of such advanced sick leave at the rate of compensation received by the member immediately prior to his date of retirement.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 731. Accumulated sick leave / History

—Added Apr. 23, 1970, No. 2700, § 15, Sess. L. 1970, p. 84; amended July 25, 1972, No. 3276, § 4, Sess. L. 1972, p. 231; June 29, 1981, No. 4602, Sess. L. 1981, p. 98; Jan. 31, 1986, No. 5135, § 1, Sess. L. 1986, p. 8; June 18, 1996, No. 6105, § 1, Sess. L. 1996, p. 43; Nov. 2, 2005, § 21, Sess. L. 2005, p. 398.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 731. Accumulated sick leave / Annotations

HISTORY

Editor's note.

Act June 18, 1996, No. 6105, § 1, Sess. L. 1996, p. 43, in subsection (a), substituted "11 to 20" for "14 to 26," and substituted "5 to 10" for "5 to 13" in the second sentence.

Amendments

—**2005.** Act 6794, § 21, substituted a period for a semicolon following "retirement" and deleted "Provided; however, That any member indebted to the Government as of the date of his retirement for advanced sick leave may petition the Governor, for good cause shown, to waive and relinquish the Government's right to reimbursement for such advanced sick leave. Upon receipt of a petition pursuant to this subsection, the Governor shall promptly cause an investigation to be conducted with regard to the allegations and justifications recited in the petition. In reviewing the petition to determine if just cause is shown, the Governor shall consider the member's financial condition, including outstanding indebtedness, the support required for the member's dependents, any medical disability or physical handicap of the member and such other factors as the Governor, in his discretion, may deem appropriate. If the Governor shall not have denied a petition in writing ninety (90) days after the receipt thereof the petition shall be automatically granted and the Government's right to reimbursement for such advanced sick leave shall be forever waived and relinquished."

Effective date.

Effective date of Act Apr. 23, 1970, No. 2700, as eff. July 1, 1970, see section 17 of such Act, set out in note under section 702 of this title.

Amendments

—**1994.** Subsection (a): Added "except that the credit for accumulated and unused sick leave shall be one year for any period consisting of 2080 hours" following "5 to 13 days inclusive" in the second sentence.

—**1986.** Subsection (a): Deleted the fourth, fifth and sixth sentences.

—**1981.** Subsection (a): Added the last three sentences.

—**1972.** Designated former section as subsection (a) and added new subsection (b).

ANNOTATIONS

1. Conflict of laws.

1. Conflict of laws.

Virgin Islands Port Authority, an instrumentality of the Virgin Islands government, acted beyond the scope of its authority in agreeing, in a collective bargaining agreement, to pay accumulated sick leave in lump sums as compensation to union retirees when a conflicting statute relating to accumulated sick leave already existed. *SIU de P.R. v. Virgin Islands Port Auth.*, 31 V.I. 345, 42 F.3d 801, 1994 U.S. App. LEXIS 34993 (3d Cir. 1994).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits /

§ 732. Special pensions death benefit provisions

§ 732. Special pensions death benefit provisions

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 732. Special pensions death benefit provisions / Text

The pension or annuity of a deceased government employee, other than one granted pursuant to chapter 27 of Title 3 of the Code, shall be payable to his widow until her remarriage or death. If said widow dies leaving a dependent child or children, such pension or annuity shall be paid to such dependent child or children.

For the purposes of this section:

(1) The term “widow” means a surviving wife of an individual, who either (a) shall have been married to such individual for at least two years immediately preceding his death or (b) is the mother of issue by such marriage, and who has not remarried.

(2) The term “dependent child” means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support.

Questions of dependency and disability arising under this section shall be determined by the Governor. The Governor may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity or pension under this section, and may suspend or deny any such annuity for failure to submit to any examination.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 732. Special pensions death benefit provisions / History

—Dec. 6, 1972, No. 3350, §§ 1–3, Sess. L. 1972, p. 525; amended Dec. 28, 1973, No. 3512, § 3, Sess. L. 1973, p. 306.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 732. Special pensions death benefit provisions / Annotations

HISTORY

Codification. Section represents a consolidation of sections 1, 2 and 3 of Act Dec. 6, 1972 and was enacted without a catchline which has been supplied by the editors.

The word “Act” was changed to “section” to conform to V.I.C. style.

Amendments

—1973. First paragraph rephrased and added reference to payment of pension or annuity to widow until remarriage or death.

Retroactive effect. Section 4 of Act Dec. 6, 1972, No. 3350, p. 526, provided:

“This Act [this section] shall take effect as of January 1, 1972.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 733. Coverage for members of the Judiciary

§ 733. Coverage for members of the Judiciary

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 733. Coverage for members of the Judiciary / Text

(a) Membership in the system for members of the Judiciary shall be optional, and shall be made available to members of the Judiciary who were in service after January 28, 1977. Salary deductions for new members of the system, at the rate prescribed herein, shall begin from the first payroll period following the filing of the application with the Administrator and credited service as a member of the system shall begin to accrue. Any new member who desires credit for service rendered as a member of the Judiciary shall contribute to the system 11% of his annual compensation.

(b) Each person who becomes a member of the Judiciary after January 28, 1977, and who is then not a participant by previous appointment, shall automatically become a member of the system and be subject to compensation deductions hereunder, unless, within 90 days from the date he becomes a member of the Judiciary, he filed with the Administrator a written notice of election not to participate.

(c) Participation in the system on the part of any member of the Judiciary shall continue until the date he becomes an annuitant, dies or accepts a refund of his contributions thereto.

Notwithstanding the provisions of this chapter, proportionate contributions shall be made by each member of the Judiciary who has completed six years of service if the member elects to receive pension credit for any period for which such member was not covered by the system. However, the proportionate contributions shall be made retroactively for the respective period of service, with the contributions being the amount of 11% of the members' annual compensation.

(d) The rate of contribution to the system on the part of a member of the Judiciary who becomes a member of the system shall be 11% of his annual compensation. This rate shall apply to service rendered beginning from the first date the member takes the oath of office as a member of the Superior Court of the Virgin Islands. For purposes of this chapter, service as a

member of the Judiciary during any part of a calendar year shall be deemed to be a year of credited service; Provided, that contributions are made for the full calendar year.

(e) Notwithstanding any other law, the conditions governing eligibility for service retirement for any member of the Judiciary and the amount of the annuity shall be as stated in this section as follows;

(1) Vesting in a service retirement annuity shall attach upon completion of one (1) term. Any member shall be eligible for service retirement beginning at age 50 on a judicial annuity equal to the following rates;

- (A) after one (1) term in office, 30% of his compensation while in office;
- (B) after two (2) terms in office 60% of his compensation while in office;
- (C) after three (3) terms in office, 90% of compensation while in office; and
- (D) after 20 years in office, 100% of his compensation while in office.

(2) It is further provided that a member of the Judiciary shall receive credit at the rate of five percent (5%) for any fractional portion of any term that has not been completed. As it applies to this subsection “fraction portion” shall mean no less than one calendar year during any particular term.

(3) For the purposes of this subsection, the term “compensation” shall mean the highest rate of compensation, received by that member of the Judiciary during his tenure and shall increase only as provided under this chapter.

(f) In the case of any member of the Judiciary who shall become separated from service before he completed an aggregate of one (1) term as a member of the Judiciary, the total amount paid by the member, shall upon his application, be returned to him or the Judicial service shall be credited to the member's service as provided in the provisions of this chapter. No member of the Judiciary shall thereafter receive credit for the service unless he again becomes a member of the Judiciary and pays back into the system the amount so returned.

From time to time the Board may determine the rate of interest being earned on the contributions of members of the Judiciary, and may credit all contributions of members with interest at the net earnings rate, compounded annually or in accordance with the provisions of section 702(k) of this chapter.

(g) Nothing contained in this chapter shall be construed to prevent any person eligible therefore from simultaneously receiving an annuity computed on the basis of years of service other than as a member of the Judiciary and an annuity computed in accordance with this section; nor shall anything contained in this chapter be construed to prevent a member of the Judiciary from receiving, while serving in the Judiciary, an annuity for non judicial service.

(h) As used in this section, the term Judiciary means the judges and magistrates of the Superior Court and the justices of the Supreme Court of the Virgin Islands.

(i) In no case shall service other than as a member of the Judiciary be considered service for the purposes of this section, nor shall service as a member of the Judiciary be considered service for the purpose other than as specified in this section.

(j) The provisions of this section with respect to conditions governing membership in the system, rates of contribution, conditions for retirement and rates of annuity, as prescribed by this chapter, shall apply to all membership of the Judiciary in service on January 28, 1977, and to those who become members of the Judiciary thereafter. All other sections of this chapter to the extent that they confer additional rights or benefits in the system to participants therein, shall apply with equal force to members of the Judiciary who are members of the system.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 733. Coverage for members of the Judiciary / History

—Added Feb. 1, 2001, No. 6391, § 2(l), Sess. L. 2000, p. 450; amended Oct. 29, 2004, No. 6687, § 7, Sess. L. 2004, p. 189; Mar. 5, 2005, No. 6730, § 55, Sess. L. 2005, p. 137; May 28, 2005, No. 6732, § 3, Sess. L. 2005, p. 152; Nov. 2, 2005, No. 6794, § 22, Sess. L. 2005, p. 399; Jan. 1, 2008, No. 6919, § 4, Sess. L. 2007, p. 31.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 733. Coverage for members of the Judiciary / Annotations

HISTORY

Amendments

—**2007.** Act 6919, § 4, inserted “and magistrates” following “judges” in subsection (h).

—**2005.** Act 6730, § 55, rewrote subsection (h).

Act 6732, § 3, rewrote subsection (h).

Act 6794, § 22, at the end of subsection (f), added “From time to time ... 702(k) of this chapter.”

—**2004.** Act 6687, § 7, inserted “justices of the Supreme Court” before “Judges.”

Effective date of amendments—2007. Act May 11, 2007, No. 6919, § 6, Sess. L. 2007, p. 31, as amended by Act June 16, 2007, No. 6929, § 40(b), Sess. L. 2007, p. 55, provided: “This Act becomes effective January 1, 2008.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 734. Continuing obligation of the Government

§ 734. Continuing obligation of the Government

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 734. Continuing obligation of the Government / Text

All payments required by this chapter to be made by the employer to the retirement fund are continuing obligations of the Government.”

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 734. Continuing obligation of the Government / History

—Added Nov. 2, 2005, No. 6794, § 23, Sess. L. 2005, p. 399.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 735. Tax exemptions of the System; protection from judicial process

§ 735. Tax exemptions of the System; protection from judicial process

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 735. Tax exemptions of the System; protection from judicial process / Text

(a) All property, including funds of the System, shall be exempt from levy and sale by virtue of execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the System be a charge or lien upon its property. However, this subsection shall not apply to or limit the right of bond holders or mortgage holders or other lending institutions to pursue any remedy for the enforcement of any pledge or lien given by the System on its fees, revenues, or other income or any other funds.

(b) In that the purpose for which the System is created and exercises its powers for public purposes, the property of the System, its income, and its activities, shall be exempt from all taxes and special assessments of the Government of the Virgin Islands or any political subdivisions thereof.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 735. Tax exemptions of the System; protection from judicial process / History

—Added Mar. 20, 2000, No. 6344, § 6(b), Sess. L. 2000, p. 14.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 736. Failure or refusal to pay

§ 736. Failure or refusal to pay

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 736. Failure or refusal to pay / Text

(a) Neither the government nor any agency, department, or instrumentality may fail or refuse to pay the employer's contribution required by this chapter within the applicable time limitation.

(b) Whenever any agency, department[,], instrumentality, or employer fails to make timely contributions, interest shall accrue on the amount of the contributions not paid based on the system's domestic fixed income investment rate of return not to exceed the rate of 9%.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 736. Failure or refusal to pay / History

—Added Nov. 2, 2005, No. 6794, § 24, Sess. L. 2005, p. 399; amended Dec. 29, 2006, No. 6905, § 5(8.), Sess. L. 2006, p. 336.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 736. Failure or refusal to pay / Annotations

HISTORY

Amendments

—2006. Act 6905, § 5(8.), rewrote subsection (b).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 737. Unclaimed benefits; redeposit of proceeds; reversion; return to credit of claimant; lump sum benefits

§ 737. Unclaimed benefits; redeposit of proceeds; reversion; return to credit of claimant; lump sum benefits

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 737. Unclaimed benefits; redeposit of proceeds; reversion; return to credit of claimant; lump sum benefits / Text

(a) Whenever a person entitled to a payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located or a Miscellaneous

Disbursement Voucher is cancelled, the payment due to the member shall be disbursed in accordance with the provisions of this section.

(b) Whenever the amount of a benefit payable by this system cannot be determined because the recipient cannot be identified, or information necessary to determination of the benefit to be paid cannot be ascertained, the accumulated contributions of the member, on whose account the benefit is payable, shall be disbursed in accordance with the provisions of this section.

(c) The amounts described in subsections (a) and (b) must be held, or if a Miscellaneous Disbursement Voucher has been drawn, the voucher must be deposited in the retirement fund and held for the claimant without further accumulation of interest. The redeposit does not operate to reinstate the membership of the person with respect to whose membership the refund or benefit was payable in this system. If the proceeds are not claimed within four years after the date of redeposit, they shall revert to, and become part of, the reserve established pursuant to section 719(3). Transfer to this reserve shall be made September 30 following the expiration of the four year period.

The Board may at any time, after transfer of the proceeds to the described reserve upon receipt of proper information satisfactory to it, return the proceeds so held in reserve to the credit of the claimant, to be administered in the manner provided for under this system.

(d) For lump-sum death benefits administered in accordance with subsection (c), where the system has caused notice of the benefits to be published in a newspaper of general circulation for at least three times a week for four consecutive weeks, and that person has not claimed the benefits, payment may be made to the next entitled beneficiary or beneficiaries, upon receipt of valid claims, if two years have passed since the date of death. Payment made by this system in good faith and in reliance on those claims, notwithstanding that it may fail to discover a person otherwise entitled to share in the benefits, shall constitute a complete discharge and release of this system from further liability for the benefits.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 737. Unclaimed benefits; redeposit of proceeds; reversion; return to credit of claimant; lump sum benefits / History

—Added Nov. 2, 2005, No. 6794, § 25, Sess. L. 2005, p. 399.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 738. Claims; time period; identification and location of beneficiaries

§ 738. Claims; time period; identification and location of beneficiaries

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 738. Claims; time period; identification and location of beneficiaries / Text

The Board may fix the time as it considers reasonable during which claims for benefits under section 737 may be made. Anyone who is provided a claim form must be given the same amount of time in which to file it as any other claimant. The Board's duty to identify or locate any member of any class of beneficiaries must be at a minimum consistent with section 737(d).

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 738. Claims; time period; identification and location of beneficiaries / History

—Added Nov. 2, 2005, No. 6794, § 26, Sess. L. 2005, p. 400.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 739. Order of payment; absence of beneficiary designation

§ 739. Order of payment; absence of beneficiary designation

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 739. Order of payment; absence of beneficiary designation / Text

(a) If a person had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors in the following order:

(1) The decedent's spouse.

(2) The decedent's natural or adopted children, including a natural child adopted by another who meets the following criteria:

(A) The natural parent and adopted child lived together at any time as parent and child or the natural parent was married to or was cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child; and

(B) The child was adopted by the spouse of either of the natural parents or after the death of either of the natural parents or the child is a natural adopted by another as that phrase is defined or construed in title 15 Virgin Islands Code, chapter 3, relating to Descent and Distribution of Decedent's Estate.

(3) The decedent's parents.

(4) The decedent's brothers and sisters.

(b) If a deceased person had no effective beneficiary designation and there are no survivors in the groups specified in subsection (a) who are entitled to the benefit under this section, the benefit shall be paid to the estate of the decedent, if the estate is either probated or subject to probate. Any benefit payable by the system may be paid either to the estate or to the duly

authorized representative or representatives of the estate upon receipt by this system of a court order appointing an executor, administrator, or personal representative.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 739. Order of payment; absence of beneficiary designation / History

—Added Nov. 2, 2005, No. 6794, § 27, Sess. L. 2005, p. 401.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 740. Statute of limitations

§ 740. Statute of limitations

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 740. Statute of limitations / Text

Notwithstanding title 5 Virgin Islands Code, chapter 3, any payment due the retirement system for services, repayment of loans or mortgages, or for the repayment of any amounts due to error or overpayment are not extinguished by the statu[t]e of limitations and shall accrue a maximum interest of thirty-three and one third percent per annum.

TITLE THREE Executive / Chapter 27. Retirement of Personnel; Federal Benefits / § 740. Statute of limitations / History

—Added Nov. 2, 2005, No. 6794, § 28, Sess. L. 2005, pp. 401, 402.