

# County Code

## ARTICLE 2. - Fairfax County Employees' Retirement System.□

### Division 1. - Generally.

#### Section 3-2-1. - Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

- (a) (1) For employees whose county or school board employment commenced by reporting for work before January 1, 2013 (members of Plans A or B), accrued sick leave credit shall mean the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees whose county or school board employment commenced by reporting for work on or after January 1, 2013 (members of Plans C or D), accrued sick leave credit shall mean the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose county or school board employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement benefits and allowances shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.
- (b) Accumulated contributions shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-2-24.1, together with interest credited on such amounts and any other amounts he shall have contributed, or transferred thereto, as provided in Section 3-2-28(c).
- (c) Actuarial equivalent shall mean a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table for Females and an interest rate of five percent.
- (d) Average final compensation shall mean the average annual creditable compensation of a member during the 36 consecutive months (78 consecutive pay periods for members who are paid on a biweekly basis) in which the member received his highest creditable compensation. In the event that a member's creditable service is less than 36 months (78 pay periods), his average final compensation shall be his average monthly creditable compensation received during the entire period of creditable service multiplied by 12 (average biweekly creditable compensation multiplied by 26 for biweekly paid members). In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his final salary during the period of his accrued unused sick leave; provided, however, that in determining the average final compensation for members who became members of this System on or after January 1, 2013 (i.e., members of Plans C or D), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose. For purposes of computing a service-connected disability retirement allowance under Section 3-2-36, a member's average final compensation shall be computed as if the member had received compensation (including salary increases which the Board determines would have been awarded to the member) for any period prior to retirement during which the member ceased employment on account of a disability for which he received compensation under the Virginia Worker's Compensation Act.

Notwithstanding the foregoing, whenever the Human Resources Director, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon his or her review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation in a manner which approximates the average final compensation the member would have if the member had received the merit increment at the time he or she would have been entitled to receive such merit increment but for the

aforesaid amendments to Section 4.3-2 of the Personnel Regulations. In performing such calculation, the Board shall utilize the following assumptions and procedures:

- (1) If the employee was scheduled to receive a merit increment in Fiscal years 1992 and 1993, it is assumed that it was delayed.
- (2) The employee received no promotions, demotions, reclassifications or regrades from the date of the delayed merit increment(s).
- (3) The employee moved through the steps as quickly as possible according to his or her respective pay plan.
- (4) The delayed merit increments and all future merit increments occurred on the day and the month which is the same day and month when the employee retires.
- (5) The employee is assumed to be in full employment each year if in full employment at the time of the delayed merit increment and also at the time of retirement.
- (6) A factor shall be derived utilizing assumptions (1) through (5) and said factor shall be used to calculate the increase if any in a member's final average compensation. If at the time of retirement, the employee has service credit for three years or more at the longevity step, then there shall be no adjustment to the member's average final compensation.

This amendment shall apply to all applications for allowances and benefits filed with the respective Boards of Trustees on or after July 13, 1991. The respective Boards of Trustees are hereby authorized and directed to make any necessary retroactive adjustments to allowances and benefits.

Notwithstanding the foregoing, in the case of any SESRP member, creditable compensation for each year after the effective date of the agreement referenced in Section 3-2-1(u) shall equal 1.05634 times the SESRP member's unadjusted compensation.

- (1) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 shall be disregarded in determining periods of consecutive months or payroll periods in calculating average final compensation.
- (e) Beneficiary shall mean any person, other than a member, entitled to receive benefits as provided by the System.
- (f) Board shall mean the Board of Trustees of the System, as provided for in this Article
- (g) Creditable compensation shall mean the full compensation, including pickup contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and civilian roll call hours paid, but excluding all overtime pay except roll call hours paid, earned on or after July 1, 1993, and excluding performance bonuses, and amounts paid upon separation from employment which represent the unused portion of an employee's accrued annual leave. In cases where the compensation includes maintenance and other prerequisites, the Board shall fix the value of that portion of the compensation not paid in money. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00 (as indexed under Section 415(d) of the Internal Revenue Code) shall be disregarded. Notwithstanding the foregoing, effective for members whose county or school board employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this plan section, the rules of Section 415(c)(3) shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.
- (h) Creditable service shall mean the sum of membership service credit, plus prior service credit, plus portability credit purchased pursuant to Section 3-2-24.1, plus accrued sick leave service credit.
- (i) Employee shall mean any person regularly employed in rendering service to the County whose compensation is fully or partially paid directly or indirectly by the County. The term "employee" shall also include all officers and other persons regularly employed by the School Board who are not eligible for membership in the Virginia Retirement System.
- (j) Employer shall mean the County School Board or an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and/or the Board of Trustees of the System.
- (k) Medical Examining Board shall mean the physician or physicians provided for by Section 3-2-9.
- (l) Member shall mean any person included in the membership of the System as provided in Section 3-2-19.

- (m) Membership service credit shall mean credit for service rendered while a member of this System, or as otherwise provided in Section 3-2-23. Service rendered while a member of SESRP shall be treated without duplication as service rendered while a member of this System.
- (n) (1) For employees whose county or school board employment commenced by reporting for work before January 1, 2013 (members of Plans A and B), normal retirement date shall mean
  - (A) The date on which a member in service attains the age of 50, provided said member's age while in service, combined with the years of his creditable service, equals at least the sum of 80 years; or
  - (B) The date on which a member attains the age of 65.
 (2) For employees whose county or school board employment commenced by reporting for work on or after January 1, 2013 (members of Plans C and D), normal retirement date shall mean
  - (A) The date on which a member in service attains the age of 55, provided said member's age while in service, combined with the years of his creditable service, equals at least the sum of 85 years; or
  - (B) The date on which a member attains the age of 65.
- (o) Pickup contributions shall mean regular member's contributions which are picked up, through a salary reduction, by the County from active members for service rendered on or after December 22, 1984.
- (p) Plan A shall mean the option effective July 1, 1981, available to employees whose county or school board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
  - (1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and
  - (2) Receive normal (and early) retirement benefits based on one and eight-tenths percent of average final compensation up to his Social Security breakpoint plus two percent of his average final compensation in excess of his Social Security breakpoint times years of service.
- (q) Plan B shall mean the option effective July 1, 1981, available to employees whose county or school board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
  - (1) Contribute five and one-third percent of all compensation; and
  - (2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service.
- (r) Plan C shall mean the option effective beginning on January 1, 2013, providing for current and new members to:
  - (1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and
  - (2) Receive normal (and early) retirement benefits based on one and eight-tenths percent of average final compensation up to his Social Security breakpoint plus two percent of his average final compensation in excess of his Social Security breakpoint times years of service;
 subject to the definitions, terms and conditions applicable to Plan C set forth herein.
- (s) Plan D shall mean the option effective beginning on January 1, 2013, providing for current and new members to:
  - (1) Contribute five and one-third percent of all compensation; and
  - (2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service;
 subject to the definitions, terms and conditions applicable to Plan D set forth herein.
- (t) Prior service credit shall mean credit for service rendered prior to the establishment of this System on July 1, 1955, as provided in Section 3-2-24.
- (u) Retirement allowance shall mean the retirement payments to which a member is entitled as provided in this Article.
- (v) SESRP shall mean the former Fairfax County Senior Executive Service Retirement Plan.

- (w) SESRP member shall mean an individual who entered into an agreement with the County to participate in SESRP in lieu of further participation in the System and who was either still an active participant in SESRP or still receiving benefits under SESRP on January 1, 1996.
- (x) Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- (y) Social Security breakpoint shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains Social Security normal retirement age. In determining a member's Social Security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year will remain the same for all future years.
- (z) System shall mean the Fairfax County Employees' Retirement System provided for in Section 3-2-2.
- (aa) Taxable wage base shall mean the maximum amount of wages received during the calendar year on which Social Security taxes are payable by the member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code, or as that Section may be amended or superseded from time to time in the future.
- (bb) Executive Director shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (cc) Internal Revenue Code shall mean the federal income tax statutes. (20-81-3; 5-85-3; 28-89-3; 27-90-3, § 1; 15-93-3; 22-93-3; 37-94-3; 25-95-3; 27-97-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 26-12-3.)

**Section 3-2-2. - Fairfax County Employees' Retirement System Established.**

Under the authority of Virginia Code, Section 51.1-801, there is hereby established a retirement system for employees, formerly known as the Fairfax County Supplemental Retirement system, to be known henceforth as the "Fairfax County Employees' Retirement system," by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Employees' Retirement System is intended to satisfy Internal Revenue Code §§ 401(a) and 414(d) requirements for qualified governmental pension plans.

(20-81-3; 10-01-3; 50-13-3.)

**Section 3-2-3. - Duties of the employer.**

The employer shall keep all necessary records relating to the hiring and employment of members and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his duties and obligations in connection with the System as a condition of employment. (20-81-3.)

**Section 3-2-4. - Acceptance of employment deemed consent to provisions of Article.**

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pickup of amounts from his compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3.)

**Section 3-2-5. - Protection against fraud and deceit.**

- (a) Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly.
- (b) Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in an attempt to defraud the System shall forfeit all rights to the benefit or allowance obtained by such misrepresentation. Making a false statement or falsifying or permitting to be falsified any record of this System in an attempt to defraud the System shall constitute grounds for dismissal from service.
- (c) Whenever the Board shall find, after notice and hearing, that a person has obtained a benefit or allowance from this System by false statement or falsification of record, it shall immediately terminate the benefit or allowance if the entire benefit or allowance was obtained by such misrepresentation or the additional amount of the benefit or allowance so obtained by such misrepresentation. Any benefit or allowance or additional amount of a benefit or allowance obtained by false statement or falsification of record shall be deemed to be an overpayment and the Board shall take all necessary legal and administrative steps to recover the overpayment.
- (d) The Board shall adopt rules and regulations pursuant to Section 3-2-15 of this Article to implement the provisions of this section; provided, however, that the failure of the Board to do so shall not prevent the implementation of the sanctions called for by this Section. A final judgment of conviction by a court of competent jurisdiction in a prosecution under Subsection (a) shall be prima facie evidence of fraud under Subsections (b) and (c) of this Section; provided, however, that a conviction

under Subsection (a) of this Section shall not be a prerequisite for action by the Board under Subsections (b) or (c) of this Section. The remedies provided the System under this Section are in addition and supplemental to any other remedies it may have under law. (20-81-3; 27-90-3, § 1.)

### **Section 3-2-6. - Assignment of benefits prohibited; benefits non-attachable.**

The right of any member to a retirement allowance, to the return of accumulated contributions or any other right accrued or accruing to any person under the provisions of this Article and the money covered by this Article shall not be subject to execution, garnishment or attachment, and to the extent permitted by law, the operation of bankruptcy or insolvency law or any other process of law whatsoever except for administrative actions pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 of the Code of Virginia or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Chapter 6 (§ 20-89.1 et seq.) of Title 20 of the Code of Virginia may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Code of Virginia, Section 20-107.3. (20-81-3; 5-85-3; 13-92-3; 1-93-3.)

### **Section 3-2-7. - Errors in records; correction and adjustment.**

- (a) Should any change or error in the records or in the computation of a member's or beneficiary's benefit or refund result in any member or beneficiary receiving from the System more ("overpayment") or less than he would have been entitled to receive had the records or computation been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.
- (b) An overpayment shall constitute a debt owed by the recipient to the System and the Board is authorized to use any and all legal and/or action to collect the overpayment and any accrued interest.
- (c) The Board is authorized to enter into written agreements with recipients of overpayments to provide for installment payments to recover the overpayment, the amount of accrued interest, and interest on any unpaid balance.
- (d) The Board is authorized to compromise any disputed overpayment.
- (e) Interest shall accrue on overpayments at the rate or rates established by the Board; provided, however, that no interest shall accrue if the Board has exercised its adjustment authority under Subsection (a) or under any other circumstances in which the Board, in its discretion, determines that interest shall not accrue. (20-81-3; 27-90-3, § 1.)

### **Section 3-2-8. - Amendment of Article.**

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which will reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. At least thirty (30) days prior to the public hearing before the Board of Supervisors on any proposed amendment, the Board shall be provided with the text of the proposed amendment to provide it the opportunity to submit its comments on the proposed amendment to the Board of Supervisors; provided, however, this limitation shall not prevent the Board of Supervisors from adopting an emergency amendment under the provisions of Code of Virginia Section 15.1-504. (20-81-3; 27-90-3, § 1.)

### **Section 3-2-9. - Medical Examining Board; members; duties.**

The Medical Examining Board shall consist of the County Director of Health Services (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (20-81-3; 27-97-3.)

## **Division 2. - Board of Trustees.**

### **Section 3-2-10. - Administration of System vested in Trustees.**

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board of Trustees of the System. The Board in its discretion, may, by rule or regulation adopted under Section 3-2-15(a), delegate authority to the Executive Director to perform certain duties and administrative responsibilities. (20-81-3; 27-90-3, § 1.)

### **Section 3-2-11. - Membership; term of office.**

- (a) The Board of Trustees of the System shall consist of ten (10) trustees as follows: The County Director of Finance, who shall be Treasurer of the Board; the personnel officer responsible for employee benefits for Fairfax County; the personnel officer responsible for employee benefits of the Fairfax County Public Schools; four (4) trustees appointed by the Board of Supervisors; two (2) members elected by the County employees who are members of this system: One (1) elected by School Board employees and one (1) elected by general County employees; and one (1) trustee who shall be a retired member elected by the retired members. Responsibility for the conduct of said elections shall rest with the County Executive.
- (b) With the exception of the Director of Finance, the personnel officer responsible for employee benefits for Fairfax County, and the personnel officer responsible for employee benefits for Fairfax County Public Schools, all of whom shall be ex officio members of the Board, the terms of office of the Trustees shall be four (4) years. The only persons eligible to be elected by County or School Board employees to the Board are County or School Board employees, who are members of this system, respectively. The office of such trustees shall be vacated should such trustees separate from County or School Board service prior to the completion of their term. (20-81-3; 27-90-3, § 1; 9-91-3; 2-93-3.)

### **Section 3-2-12. - Vacancies in office.**

If a vacancy occurs in the office of a Trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3.)

### **Section 3-2-13. - Compensation of Trustees.**

Those trustees eligible for compensation under County policy may receive compensation at a rate set by the Board of Supervisors. (20-81-3.)

### **Section 3-2-14. - Accountable to Board of Supervisors.**

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)

### **Section 3-2-15. - Functions of Board.**

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the system and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the system funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the system and for checking the experience of the system.
- (d) The Board shall keep minutes of all its proceedings. These minutes shall be open to public inspection in accordance with the Virginia Freedom of Information Act, except as limited by the Privacy Protection Act of 1976. The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (e) Beginning July 1, 1990, the Board shall cause an actuarial valuation to be made of the System annually. (20-81-3; 27-90-3, § 1.)

## **Division 3. - Management of Funds.**

### **Section 3-2-16. - Board trustee of funds; investment of same.**

The Board shall be the trustees of funds created by this Article and shall have full power to invest and reinvest such funds. Such investments and reinvestments shall be conducted with bona fide discretion and in accordance with the laws of this Commonwealth as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.

No member of the Board shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3.)

### **Section 3-2-17. - Treasurer fiscal officer of Board.**

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He shall give bond as a condition for the faithful performance of his duties and the proper accounting of all funds and securities coming into his hands. He shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (20-81-3.)

**Section 3-2-18. - Prohibited interest of member or employee of Board.**

Except as otherwise provided in this Article, no member or employee of the Board shall have any direct or indirect interest in the gains or profits of any investment held by the system. No member or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use the funds of the system, except to make such current and necessary payments as are authorized by the Board. (20-81-3.)

**Division 4. - Membership in System.**

**Section 3-2-19. - Persons comprising membership.**

Membership shall be composed of the following:

- (a) All persons who were members of this System on the effective date of this Article and all SESRP members; provided, however, that benefits under this System in the case of SESRP members shall be in lieu of, and not in addition to, benefits under SESRP.
- (b) Future employees as hereinafter identified, except those listed in Subsections (b)(1), (b)(2), and (b)(3) of this Section.

- (1) Exceptions for non-School Board County employees. Employees who are members of the Virginia Retirement System and the Educational Employees Supplemental Retirement System (Article 4), the Fairfax County police officers Retirement System (Article 7), or the Uniformed Retirement System (Article 3) and employees who are eligible to become members of those systems, are not eligible for membership in this System; provided however, that an employee who is a member of such a system shall be eligible for membership in this system if he elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee will be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23.

If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee will be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23. Exempt limited term and exempt part-time employees are not eligible for membership in this System; provided, however, that any such employee who became a member of this System under the provisions of this Article in effect at the time they commenced their service with the County shall continue to be a member. The following employees who elect, in writing at the time of their initial eligibility to become members of this System, not to become members shall be exempted from this System:

Elected officials, including constitutional officers and persons appointed to fill vacancies in elective offices, and their appointed deputies or assistants.

- (2) School Board employees who are members of the Virginia Retirement System are not eligible for membership in this System. Substitute employees, food service employees whose assigned employment is less than three hours per day, and temporary employees are not eligible for membership in this System.
  - (3) Certain members of the Uniformed or Police Officers Retirement Systems who are appointed to serve as a deputy county executive. Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of either the Uniformed Retirement System or the Police Officers Retirement System who has more than five years of creditable service in such system and who is appointed to serve as a deputy county executive shall remain a member of the system to which he or she belonged, whether the Uniformed Retirement System or the Police Officers Retirement System, prior to his or her appointment as a deputy county executive, and shall not become a member of this System as a result of such appointment.
- (c) Any employee, otherwise qualified, who elected not to or was unable to become a member of this System pursuant to any ordinance then in effect, provided he pays into this System all contributions which would have been due from him had he been a member of this System during the period of his employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit under this Subsection through the payment of contributions for a prior period

of employment must be made within one year after the employee is first eligible to make such an election or by (six months from the effective date of this amendment), whichever is later.

- (d) Provisions for the transfer of uniformed employees of the Department of Animal Control into the membership of the Fairfax County Uniformed Retirement System (Uniformed System):
- (1) Members of this System who were uniformed employees of the Department of Animal Control, including the Director, on or after October 1, 1985, except those eligible to remain in this System pursuant to Subsection 3-2-19(d)(2), are hereby transferred to membership in the Uniformed System effective the latter of October 1, 1985, or the date of their appointment.
  - (2) Those members subject to transfer to the Uniformed System pursuant to Subsection 3-2-19(d)(1) who as of the date of adoption of Subsection 3-2-19(d) have attained normal retirement age under this System shall continue as members of this System unless within 30 days after the adoption of Subsection 3-2-19(d) they make an irrevocable election in writing to transfer into the Uniformed System pursuant to the provisions of this subsection.
  - (3) Members of this System being transferred to the Uniformed System pursuant to this Subsection shall, within 30 days of the adoption of this Subsection, make an irrevocable election in writing to either waive membership service credit in the Uniformed System based upon their service in this System or to purchase membership service credit in the Uniformed System based on their service in this System pursuant to the provisions of Section 3-3-24. Members who fail to make an election shall be deemed to have elected to waive membership service credit.
  - (4) Members with five or more creditable years of service with this System who elected to waive membership service credit in the Uniformed System pursuant to Subsection 3-2-19(d)(3) shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions (with interest), reduced by the amount of any retirement allowances previously received by them under any of the provisions of this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under the provisions of Subsection 3-2-38(b). Members who fail to make an election shall be deemed to have elected a refund. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed System pursuant to Subsection 3-2-19(d)(3) shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under any provisions of this Article.
  - (5) With respect to each member electing to purchase membership service credit in the Uniformed System pursuant to Subsection 3-2-19(d)(3), the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed System.
  - (6) The Board shall transfer to the Board of Trustees of the Uniformed System any employee or employer contributions received by it attributable to members transferring to the Uniformed System pursuant to Subsection 3-2-19(d)(1) or (2) for service rendered after the effective date of the members' transfer. The Board of Trustees of the Uniformed System shall credit such funds to the appropriate accounts of the Uniformed System.
- (e) Provisions for the transfer of certain employees of the Public Safety Communications Center in the job classes of Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II, or Public Safety Communicator I into the membership of the Fairfax County Uniformed Retirement System (Uniformed System): Members of this System who elect to enter DROP on or before September 1, 2005, are not eligible for transfer to the Uniformed System:
- (1) Members of this System who are in one of the job classes identified herein, on or before June 30, 2005, shall have the opportunity to transfer to membership in the Uniformed System, effective the start of the first pay period beginning on or about October 1, 2005.
  - (2) Members of this System who are eligible for transfer to the Uniformed System pursuant to Subsection 3-2-19(e)(1) may elect to maintain their membership in this System and not transfer to the Uniformed System.
  - (3) Members of this System who are eligible for transfer to the Uniformed System pursuant to Subsection 3-2-19(e)(1) and elect to do so, shall, after the adoption of Subsection 3-2-19(e), on or before September 1, 2005, make an irrevocable election in writing to transfer to the Uniformed System. Members electing to transfer to the Uniformed System may elect to transfer to the Uniformed System but not purchase membership service credit in the Uniformed System based upon their service in this System, or may elect to purchase membership service credit

in the Uniformed System based on their service in this System pursuant to the provisions of Section 3-3-24. Transferring members who fail to make an election shall be deemed to have elected to waive the opportunity to purchase membership service credit in the Uniformed System.

- (4) Members with five or more creditable years of service with this System who elect to waive membership service credit in the Uniformed System shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions with interest reduced by the amount of any retirement allowance previously received by them under any provisions of this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under the provisions of Subsection 3-2-38(b). Members who fail to make an election shall be deemed to have elected not to receive a deferred vested benefit. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed System pursuant to Subsection 3-2-19(e)(3) shall be refunded their accumulated contributions with interest reduced by the amount of any retirement allowances previously received by them under any provisions of this Article.
- (5) With respect to each member electing to purchase membership service credit in the Uniformed System pursuant to Subsection 3-2-19(e)(3), the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed System, who shall credit such funds to the appropriate accounts of the Uniformed System. Members electing to purchase membership service credit in the Uniformed System shall have the option of paying to the Board of Trustees of the Uniformed System the difference between the employee contributions that would have been required under the Uniformed System plus interest, and their employee contributions plus interest to this System for the period for which membership service credit is sought. Members who elect to pay the difference between the employee contributions plus interest that would have been required under the Uniformed System and their employee contributions plus interest to this System, shall not be eligible to enter DROP under the Uniformed System until the entire amount of the difference in employee contributions plus interest has been paid to the Uniformed System and the member otherwise meets the eligibility requirements to enter DROP under the Uniformed System. In lieu of paying the difference between the employee contributions that would have been required under the Uniformed System plus interest and their employee contributions plus interest to this System, a member may elect to have the amount of membership service credit transferred to the Uniformed System actuarially reduced based on the amount that would have been required.
- (6) The Board shall transfer to the Board of Trustees of the Uniformed System any employee or employer contributions received by it attributable to member's transfer to the Uniformed System pursuant to Subsection 3-2-19(e)(1) or (2) for service rendered after the effective date of the member's transfer. The Board of Trustees of the Uniformed System shall credit such funds to the appropriate accounts of the Uniformed System.
- (f) Persons receiving a normal or early retirement allowance from this System, the Uniformed Retirement System (Article 3), or Police Retirement System (Article 7), are eligible for membership only under the terms and conditions set forth in Section 3-2-43.
- (g) The Board may at any time and from time to time, establish a new interest rate or rates which shall be applicable to purchases of membership service credit under Subsection (c) of this Section. (20-81-3; 34-81-3; 23-85-3; 36-86-3; 14-87-3; 27-90-3, § 1; 45-93-3; 23-05-3; 26-12-3.)

### **Section 3-2-20. - Cessation of membership.**

The membership of any person in the System shall cease:

- (a) If he ceases to be an employee for a period of five (5) years, having had less than five (5) years of creditable service on his date of separation from the County; or
- (b) Upon separation and withdrawal of his accumulated contributions; or
- (c) If a member, as defined in Subsection 3-2-19(b)(1) of this Section, gives the Board written notification of his withdrawal from the System; or
- (d) Upon death. (20-81-3; 4-81-3.)

## **Division 5. - Service Credit.**

### **Section 3-2-21. - Statement to be filed with Board.**

Under such rules and regulations as are adopted by the Board, each member or someone on his behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his status as a member, which shall include a statement of all service rendered as an employee, and such other information as the Board may require. Until such statement is filed, no member or his beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)

### **Section 3-2-22. - Year of service.**

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)

### **Section 3-2-23. - Membership service credit.**

- (a) Each member shall receive membership service credit for periods in which he or she received compensation and was a member of this System, provided that any former member of this System who ceased his or her county or school board employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions that would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; however, a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service. In the event that a member of either Plan A or Plan B who ceased his or her county or school board employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of this System, he or she may only become a member of, and purchase membership service credit in, either Plan C or Plan D, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; however, notwithstanding the foregoing, a member of any of the four Plans (A, B, C or D) that are part of the Employees' Retirement System who ceased his or her county or school board employment, but who left his or her accumulated member contributions in the System, must, upon his or her return to county or school board employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from his or her for the purchase of such service through a rollover from an individual retirement account if and only if the entire amount in that account is attributable to a rollover from this System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in section 457(b) of the Internal Revenue Code maintained by an eligible employer described in section 457(e)(1)(A) of the Internal Revenue Code, or through a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code.
- (b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from this System.
- (c) Members whose service is terminated to enter into the armed forces of the United States and who subsequently return to service in this System shall be granted membership service credit for the period of their service in the armed forces of the United States to the extent required under the provisions of federal and state law.
- (d) A member who transfers from a position in the service of the Fairfax County Public Schools (Schools) in which he was a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ER-FC) to a position in the County service shall receive membership service credit for periods that he had been employed by the Schools and was a member of VRS and the ER-FC if such service will not be considered in the calculation of any benefit or allowance from VRS or ER-FC and if such member pays into this System all contributions that would have been due from him had he been a member of this System, plus interest at the rate or rates established by the Board, for each of the years for which membership service credit is sought.
- (e) The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable to Subsections (a) and (d) of this Section. Any election to purchase membership service credit under Subsections (a) or (d) may be made at any time by a member of the System while in service. The Board may enter into agreements with members purchasing membership service credit under the provisions of Subsections (a) and (d) of this Section to pay the member

contributions due from them in installments, provided that such members shall not be entitled to such service credit until all payments under such agreements have been made

- (f) (1) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System and the Educational Employees Supplemental Retirement System (Article 4), the Fairfax County Police Officers Retirement System (Article 7), or the Uniformed Retirement System (Article 3), and who withdraws therefrom and becomes a member of this System, may purchase service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him had he been a member of this System for each of the years for which membership credit is subject. (A member may purchase membership service credit for prior service while a member of the Virginia Retirement System only for service due to employment by the Fairfax County Public Schools.)
- (2) The amount due from a member for such purchase of service credit must be satisfied, to the extent possible, (a) by directing the trustees of the system from which he is withdrawing to transfer his accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from a system, or (iii) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in section 457(b) of the Internal Revenue Code maintained by an eligible employer described in section 457(e)(1)(A) of the Internal Revenue Code, or through a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code. To the extent that a rollover or direct transfer permitted under this Section 3-2-23 is insufficient to purchase the necessary service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such service credit. (20-81-3; 5-85-3; 27-90-3, § 1; 45-93-3; 36-94-3; 7-00-3; 10-01-3; 8-03-3; 26-12-3.)

### **Section 3-2-24. - Credit for prior service.**

- (a) Prior service credit may be granted to persons who were members of the System on July 1, 1955, or who were employees who had previously left service to enter directly into the armed forces of the United States and who were still in the armed forces on or after that date as provided in Subsection (b) of this Section.
- (b) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. This amendment shall be applied retroactively to January 1, 2003. (20-81-3; 27-90-3, § 1; 30-09-3.)

### **Section 3-2-24.1. - Portability of service credit.**

- (A) Definitions. For the purpose of this section, these terms shall be defined as follows:
  - (1) "Accepting plan" shall mean the retirement plan or system which is receiving membership assets from another defined benefit retirement plan or system in order to permit a current member to purchase portability credit in the accepting plan through the use of his or her membership contributions to the transferring plan.
  - (2) "Portability credit" shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
  - (3) "Transferring plan" shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase portability credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (B) The Board of Supervisors of Fairfax County may enter into agreements with the Virginia Retirement System or with any political subdivision of the Commonwealth of Virginia to permit any vested member of the Virginia Retirement System or any vested member of a retirement system of a political subdivision of the Commonwealth of Virginia to purchase portability credit in the Fairfax County Employees' Retirement System; provided, however, that the Board of Supervisors may only enter into such agreements with political subdivisions of the Commonwealth of Virginia whose retirement plans constitute defined benefit plans or eligible deferred compensation plans described in section 457(b) of the Internal Revenue Code maintained by an eligible employer described in section 457(e)(1)(A) of the Code.
- (C) The purchase of portability credit in this System pursuant to this Section may only be made within 18 months of the date when a member commences employment in a position covered by this System, or, for employees who are members of this System on the date of the enactment of this ordinance, within 18 months of the date of the enactment of this ordinance.

- (D) In order to purchase portability credit in this System, the member must be a vested member of the transferring plan and the transferring plan must be holding member contributions that are subject to transfer. A member desiring to purchase portability credit shall make written application for the purchase of such credit to the System. The System will determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board of Trustees of the System will determine the amount of portability credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount will represent the maximum amount of portability credit that can be purchased. The Board of Trustees will communicate the amount of portability credit that can be purchased to the member in writing; however, in no event will the amount of portability credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability credit.
- (E) In the event that the assets transferred are not sufficient to purchase portability credit in this System equivalent to five (5) years of service, the member will not become vested in this System until his or her creditable service equals five years.
- (F) The purchase of portability credit in this System shall be accomplished upon the transfer of assets from the transferring plan to this System. Upon the completion of such transfer, the member shall lose all rights to any benefits and allowances from the transferring plan, and will only be entitled to receive benefits and allowances from this System.
- (G) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may purchase portability credit in the Virginia Retirement System or the retirement plan of the political subdivision of the Commonwealth for whom he or she shall then work. In order to purchase such portability credit, the member must make application in writing to this System, requesting that his or her membership assets be transferred to the accepting plan. The amount of assets subject to transfer shall be an amount equal to the greater of (i) his or her accumulated member contributions with interest thereon, or (ii) an amount representing the present value of his or her accrued benefits with this System. Upon the transfer of membership assets from this System to the accepting plan, the member shall lose all rights to any benefits or allowances from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

## **Division 6. - Contributions.**

### **Section 3-2-25. - Member contributions.**

- (a) There shall be picked up from the compensation of each member for each and every payroll period ending subsequent to December 22, 1984, the contribution payable by such member as provided in this Section; provided, however, that no contributions shall be required or permitted of any SESRP member. The Board of Supervisors may, from time to time, revise the rates of member contributions.
- (b) Except as provided in Section 3-2-25(a), all present and future members, otherwise qualified, who, on or before December 31, 1981, and upon approval of the Board of Trustees or within thirty (30) days of appointment as employees:
  - (1) Do not agree in writing to the provisions set forth in Section 3-2-25(b)(2) and Section 3-2-32(a)(2) will be considered as participants in Plan A and contributions shall be made for each pay period for which he received compensation equal to four percent (4%) of his creditable compensation until his annual creditable compensation during the calendar year exceeds the taxable wage base. When such a member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and one-third percent (5 1/3%) of his creditable compensation.
  - (2) Agree in writing to the provisions set forth in Section 3-2-25(b)(2) and Section 3-2-32(a)(2) will be considered participants in Plan B, and contribution shall be made for each pay period for which he received compensation subsequent to the election of Plan B equal to five and one-third percent (5 1/3%) of his creditable compensation.
- (c) Notwithstanding any other provision of this Section, no pickup shall be made from any member's compensation if the employer's contribution required hereunder is in default.

- (d) The Board may modify the method of collecting the pickup contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board as provided in Subsection (b) of this Section may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.
- (e) The Board of Trustees may approve written requests to change the offered optional plan selected under Subsection (b) of this Section when such requests are made not later than December 31, 1981.
- (f) All contributions required to be made under paragraphs (b) and (c) above with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County and shall be treated as the employer's contribution in determining tax treatment under the United States Internal Revenue Code for federal tax purposes, pursuant to 26 USC § 414(h)(2). For all other purposes under this chapter and otherwise, such pickup contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked up amounts shall be included in compensation for purposes of calculating benefits under Division 8. The County of Fairfax shall pay such picked up amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 34-81-3; 36-83-3; 5-85-3.)

**Section 3-2-26. - Employer contributions.**

- (a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.
- (b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is 90% and the upper measurement of which is 120%. The employer normal cost and actuarial accrued liability are to be measured using the aggregate accrual modification of the entry age normal funding method.

To the extent that the System's funding ratio exceeds 120%, a credit shall be established equal to the amount of assets in excess of 120% of the actuarial accrued liability. To the extent that the System's funding ratio is lower than 90%, a charge shall be established equal to the difference between 90% of the actuarial accrued liability and the assets. The employer contribution shall be adjusted by a 15 year amortization of this credit or charge, to be paid until the funding ratio re-enters the corridor at which time it will cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there will be an additional component to the employer cost equal to a 15 year amortization of the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120% shall be excluded from this component. (20-81-3; 27-90-3; 16-02-3)

**Division 7. - Assets of System.**

**Section 3-2-27. - Assets to be credited to one of two accounts.**

All of the assets of the System shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, "the members' contribution account," and "the retirement allowance account." (20-81-3.)

**Section 3-2-28. - Members' contribution account.**

- (a) The members' contribution account shall be the account to which all members' contributions, pickup contributions and interest allowances as provided in this Article shall be credited. In the case of any SESRP member, the member's contribution account shall consist of the amount in the Severance Account as defined in the provisions of SESRP effective on January 1, 1996, and the member's accumulated contributions to the System in existence at the time the member elected to participate in the SESRP. After January 1, 1996, the member's contribution account of any SESRP member shall annually be credited with the difference between the SESRP member's creditable compensation and the member's unadjusted compensation. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal or paid in the event of his death before retirement.
- (b) Each member's contribution and pickup contributions provided for in Section 3-2-25 shall be credited to the individual account of that member.

- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate or rates established by the Board; provided, however, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years. The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable under this Section.
- (d) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.
- (e) Upon receipt of a completed application, the Board shall refund the individual accounts of members who have ceased to be employees after completing fewer than five years of creditable service. The completed application must include an election by the member directing the System to refund the individual account directly to the member or to directly transfer the account to another plan as permitted under the provisions of the Internal Revenue Code. (20-81-3; 5-85-3; 27-90-3; 40-08-3.)

**Section 3-2-29. - Retirement allowance account.**

- (a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the system after all expenses for required services shall be credited. This amount shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the system.
- (b) The amount of interest allowances provided for in Section 3-2-28 shall be transferred each year from the retirement allowance account to the members' contributions account.

(20-81-3.)

**Section 3-2-30. - Deposits.**

For the purpose of meeting disbursements the Board will maintain sufficient cash equivalents.

(20-81-3.)

**Division 8. - Benefits and Conditions Thereof.**

**Section 3-2-31. - Service retirement.**

- (a) Normal Retirement. Any member, in service at his normal retirement date or within nine (90) days prior thereto, and who has completed five (5) years of creditable service, may retire at his normal retirement date or thereafter upon written notice to the Board, made by the member or his duly appointed agent, and stating the time the retirement is to become effective. However, such effective date shall be subsequent to the filing of such notice.
- (b) Early Retirement. Any member who has completed twenty-five (25) years of creditable service and attained the age of fifty (50) years, or any member who has completed at least ten (10) years of creditable service and whose age, when combined with the years of his creditable service equals at least the sum of seventy-five (75) years, may retire pursuant to the procedures set forth in Subsection (a) of this Section.

(20-81-3; 14-87-3.)

**Section 3-2-32. - Service retirement allowance.**

- (a) Normal Retirement.
  - (1) Upon service retirement after July 1, 1981, a member participating in either Plan A or Plan C shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to one and eight-tenths percent of his average final compensation not in excess of his Social Security breakpoint plus two percent of the average final compensation in excess of his Social Security breakpoint, said sum multiplied by the number of years of creditable service.
  - (2) Upon service retirement after July 1, 1981, and after undergoing the additional cost deductions through December 31, 1981, a member participating in either Plan B or Plan D shall receive an annual retirement allowance payable monthly

for life consisting of an amount equal to two percent of his average final compensation, said amount multiplied by the number of years of creditable service. In the event a participant in Plan B retires before December 31, 1981, the accumulated additional deductions in excess of four percent of pay not in excess of the taxable wage base shall be refunded and the member's retirement allowance will be determined in accordance with Subsection (a)(1) of this Section.

(3) Additional benefits:

(A) In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who had retired prior to the age of 62 and before July 1, 2000, shall receive except as provided in Section 3-2-32(a)(3)(B) an additional monthly benefit equal to one percent of the average final compensation not in excess of his Social Security breakpoint times years of service until such member attains the age of 62. This additional benefit shall be referred to as the Pre-62 Compensating Benefit.

(B) In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who retires on or after July 1, 2000, or any member who had retired prior to the age of 62, before July 1, 2000 and who had not attained the age of 62 as of July 1, 2000, shall receive an additional monthly benefit equal to one percent of the average final compensation not in excess of his Social Security breakpoint times years of service until the first month after such member is entitled to an unreduced Social Security benefit. This additional benefit shall be referred to as the Pre-Social Security Benefit. Any member who retired on or after July 1, 2000, and before February 26, 2001, and was at least 62 years of age but not yet entitled to an unreduced Social Security benefit as of the date of his or her retirement, shall receive the Pre-Social Security Benefit, without interest, retroactive to the effective date of his or her retirement. However, the Pre-Social Security Benefit provided herein shall not be credited to the DROP accounts of members of Plans C or D who elect to participate in the Deferred Retirement Option Program provided for in Section 3-2-57; however, upon the completion of the member's DROP period, the member shall be entitled to receive the Pre-Social Security Benefit provided herein if he or she is not then entitled to an unreduced Social Security Benefit until the first month after such member is entitled to an unreduced Social Security benefit.

(b) Early Retirement. Upon early retirement, a member shall receive an amount which shall be determined in the same manner as for retirement at his normal retirement date under Subsections (a)(1) and (2) of this Section, with years of creditable service and average final compensation being determined as of the date of his actual retirement, and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the date the member will attain age 65.

(c) Joint and Last Survivor Option. A member may elect to receive a decreased retirement allowance during his lifetime and to have such retirement allowance, or a specified fraction thereof, continue after his death to his spouse, for his spouse's lifetime. Such election may be made or changed at any time up to the member's actual retirement date. After the member's actual retirement date, such election may not be changed except as permitted by Subsections (1) and (2) of this Subsection (c). The amount of such retirement allowance shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 1.

TABLE 1

FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Participants with a Normal or Early Retirement Benefit Determined Under Section 3-2-32 Who Elect a Joint and Last Survivor Option.

Percent of Benefit Continued to Spouse Upon Participant's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	85%	0.7%	96%
75%	89%	0.6%	97%
66.67%	90%	0.5%	98%
50%	92%	0.4%	99%

(d) Minimum Benefit:

- (1) In no event shall the annual retirement allowances for a member retiring after December 31, 1970, be less than that determined under the system as in effect on or prior to such date, nor shall any member's annual retirement allowance be less than \$300.00.
- (2) If the retirement allowance of any member who retires during a calendar year beginning on or after January 1, 1979, to December 31, 1981, inclusive, would have been larger if computed as of December 31 of the calendar year preceding the member's retirement, the member shall be entitled to the larger retirement allowance. A member who elects to receive such allowance shall also be eligible for a refund of his contributions accumulated from January 1 of the year of his retirement through the date of his actual retirement.

(20-81-3; 34-81-3; 36-88-3; 11-00-3; 10-01-3; 26-12-3; 50-13-3.)

**Section 3-2-33. - Ordinary disability retirement.**

- (a) Any member who is in service or who is within one (1) year of the date that he ceased being in service and who has five (5) or more years of creditable service may retire on account of disability, not compensable under the provisions of Section 3-2-35, upon written application to the Board, made by the member or his employer, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than ninety (90) days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of the application, mentally or physically incapacitated for further employment by the employer, that such incapacity is likely to continue into the indefinite future, and that such member should be retired.
- (b) Any member who has not been in service for more than a year at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if and only if:
  - (1) Written application is made containing a justification for the failure to apply within one (1) year of ceasing service; and
  - (2) The Board finds:
    - (A) The disability arose in the course of the member's service;
    - (B) The disability was the proximate cause of the member's ceasing to be in service; and
    - (C) There was good cause for the member not to have filed an application while in service or within one (1) year after the date that he ceased to be in Service.
- (c) In the event that a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which considering all the circumstances of the individual case is just; provided however, such date shall be no more than ninety (90) days prior to the execution and filing of his application. (20-81-3; 34-81-3; 27-90-3, § 1.)

**Section 3-2-34. - Ordinary disability retirement allowance.**

Upon retirement as provided for in Section 3-2-33, a member shall receive an annual retirement allowance, payable monthly during his lifetime and continued disability, consisting of an amount equal to two percent (2%) of his average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than sixty percent (60%) of the member's average final compensation or less than three hundred dollars (\$300.00) per annum. (20-81-3.)

**Section 3-2-35. - Service-connected disability retirement.**

- (a) Any member who is in service or within one (1) year of the date that he ceased to be in service may retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service; provided that the Medical Examining Board, after a medical examination of such member shall certify that such member is, and has been continuously since the date such retirement is to be effective, mentally or physically incapacitated for further employment by the employer as a result of such injury or disease, that such incapacity is likely to continue into the indefinite future, and that such member should be retired. The Board shall determine whether a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the

Board shall consult the decisions of the Industrial Commission, the Court of Appeals, and the Supreme Court of Virginia which have applied or construed similar language under the Virginia Workers' Compensation Act.

- (b) The member or his employer must submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than ninety (90) days prior to the date of such application. Prior to submitting such application, the member must apply for all Social Security benefits to which he may be entitled. The member shall also report his injury or disease and make a claim for Workers' Compensation benefits to his employer in accordance with the policies and procedures established by the County or the County School Board and cooperate in the investigation of his claim by the employer or its agent. The member shall submit copies of the dispositions as made of his Workers' Compensation and Social Security claims and any subsequent awards or other documents reflecting any modification or termination of such benefits to the Board. In making its determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Industrial Commission, the Court of Appeals, and the Supreme Court of Virginia on the compensability of his disability under the Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within ninety (90) days after the date that such decision becomes final.
- (c) Any member otherwise eligible for retirement under Section 3-2-33, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to the provisions of Section 3-2-33.
- (d) Any member who has not been in service for over one (1) year at the time of his application who is otherwise eligible for service-connected disability retirement under this Section may be granted a service-connected disability retirement if and only if:
  - (1) Written application is made containing a justification for the failure to apply within one (1) year of ceasing to be in service; and
  - (2) The Board finds:
    - (A) The disability arose in the course of the member's service;
    - (B) The disability was the proximate cause of the member's ceasing to be in service; and
    - (C) There was good cause for the member not to have filed an application while in service or within one (1) year after the date that he ceased to be in service. (20-81-3; 24-85-3; 14-87-3; 27-90-3, § 1.)

**Section 3-2-36. - Service-connected disability retirement allowance.**

- (a) Upon retirement under the provisions of Section 3-2-35, a member shall receive an annual retirement allowance, payable monthly and during his lifetime and continued disability, consisting of an amount equal to sixty-six and two-thirds percent (66 2/3%) of his average final compensation. However, the allowance shall be reduced by fifteen percent (15%) of the amount of any primary Social Security benefit to which said member is entitled under any Federal Social Security Act, and the amount of any compensation paid to the member under the Virginia Workers' Compensation Act ("the Act") for temporary total or partial incapacity.
- (b) When the amount of a member's primary Social Security benefit has once been determined for purpose of applying the fifteen percent (15%) reduction described above, the amount of the reduction shall not thereafter be increased on account of cost-of-living increases awarded under any Federal Social Security Act. However, the amount of the reduction shall be increased by award of a cost-of-living increase to a member's compensation for temporary total or partial incapacity under the Act. When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance, and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (c) If a member receives his compensation for temporary total or partial incapacity under the Act in the form of a lump sum payment, he shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he would have received equal the amount of his lump sum benefit under the Act; provided, however, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-2-35 shall be offset against the member's allowance under this Section; and, provided further that in the event that a member receives a lump sum settlement of benefits that he is or may be entitled to in the future under the Act, and said settlement does not specify how

much of the sum represents settlement of his entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such sum which in its judgment represents compensation for such benefits.

(20-81-3; 4-83-3; 1-93-3; 23-07-3; 47-08-3; 23-11-3; 66-13-3, § 1)

### **Section 3-2-37. - Service-connected accidental death benefit.**

If death of a member is caused by an accident occurring prior to retirement and such death is compensable under the Virginia workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

- (a) For a member whose death occurs before retirement:
  - (1) The member's accumulated contributions, as provided in Section 3-2-28(c) to the designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided no benefit is payable under Section 3-2-38 or under Section 3-2-42; and
  - (2) The sum of ten thousand dollars (\$10,000.00) to the designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.
- (b) For a member whose death occurs after retirement.
  - (1) The member's accumulated contributions, as provided in Section 3-2-28(c) less the amount of any retirement allowance previously received by the member, such sum to be paid to his designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided no benefit is payable under Section 3-2-32(c) or under Section 3-2-38; and
  - (2) The sum of ten thousand dollars (\$10,000.00) to his designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.

Designated beneficiaries under this Section may be changed from time to time pursuant to the procedure prescribed by the Board. (20-81-3; 34-81-3; 5-85-3.)

### **Section 3-2-38. - Refund of contributions upon withdrawal or death; and deferred vested benefits.**

- (a) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Article, and has fewer than five years of creditable service on his date of separation, he shall be eligible for a refund of the total of his accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him under any of the provisions of this Article. The member must file a written application with the Board for such refund and the application must include an election by the member directing the System to have the refund paid directly to the member or to transfer the refund amount to another plan identified by the member as permitted under the provisions of the Internal Revenue Code.
- (b) If a member has five or more years of creditable service on his date of separation from the County, the member may leave his accumulated contributions in the fund and receive a deferred annuity payable beginning the date the member attains age 65, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. In lieu of a deferred vested annuity, a member with five or more years of creditable service may elect to receive a refund of his accumulated contributions (with interest) reduced by the amount of any retirement allowance previously received under any of the provisions of this Article. The member must file a written application with the Board on separation, or at any time thereafter, so long as he has not yet begun to receive a deferred vested annuity. The application must include an election by the member directing the System to have the refund paid directly to the member or to transfer the amount to another plan identified by the member as permitted under the provisions of the Internal Revenue Code. The refund shall be made not later than 90 days after the receipt of the application.
- (c) Should death occur to a member in service who has completed less than 15 years of creditable service or to a member on retirement, the amount of his accumulated contributions, reduced by the amount of any retirement allowance previously received by him under any of the provisions of this Article, shall then be payable in a lump sum to a designated beneficiary, or in the absence of a designated beneficiary, to his estate; provided no benefit is payable under subparagraph (c) of Section 3-2-32. Such designated beneficiary may be changed from time to time by written notice by the member, signed and filed with the Board.
- (d) Should death occur to a member in service who has completed 15 years of creditable service and if the member's designated beneficiary, duly approved, acknowledged and filed with the Board, is not the member's spouse, a lump sum payment

equaling the member's accumulated contribution, as provided in Section 3-2-28(c), shall be paid to the designated beneficiary.

- (e) Should death occur to a member in service who has completed 15 years of creditable service and has no designated beneficiary, a lump sum payment equaling the member's contribution shall be paid to the member's estate; provided that, if such member's spouse is the sole person entitled under the laws of Virginia to the benefits provided hereunder then said spouse shall have the same right to elect benefits as is provided to spouses in Section 3-2-42.
- (f) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.
- (g) A member who becomes eligible for membership in either the Virginia Retirement System and the Educational Employees Supplemental Retirement System (Article 4), the Fairfax County Police Officers Retirement System (Article 7), or the Uniformed Retirement System (Article 3) prior to receipt of any refund amount to which he is entitled may elect in writing to transfer the amount of his refund directly from this System to the system for which he has become eligible for membership, under such rules and regulations as are adopted by the Board and by the board of the system for which he has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Internal Revenue Code Section 402(f)(2)(A), such a member may (a) pursuant to the rules and regulations of the system of which he is eligible to become a member, elect in writing to roll over the portion of his refund which represents such an eligible rollover distribution directly from this System to the system for which he has become eligible for membership or (b) elect in writing to roll over the portion of his refund which is such an eligible rollover distribution directly to an individual retirement account.
- (h) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. This provision shall also apply to Section 3-2-42 regarding spouse retirement allowances. (20-81-3; 34-81-3; 5-85-3; 27-90-3; 45-93-3; 10-01-3; 40-08-3; 01-11-3.)

**Section 3-2-39. - Medical examination of beneficiary of disability retirement allowance; penalty for unjustified refusal to accept medical attention or vocational rehabilitation or selective employment, or to submit to medical examination.**

- (a) At least once each year during the first five (5) years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such member prior to his normal retirement date to undergo a medical examination by the Medical Examining Board; provided, that said medical examination requirement shall not be applicable to a member on a disability retirement allowance during the period such member is receiving benefits under the Virginia Workers' Compensation Act. On recommendation of the Medical Examining Board, the Board may waive the medical examination requirement as to any such member. Should such a member refuse to submit to any such medical examination, his retirement allowance shall be discontinued until his withdrawal of such refusal; and should his refusal continue for one (1) year, all his rights to any further disability allowance shall cease.
- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-2-35, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act which are required to be offset against the allowances pursuant to Section 3-2-36, shall cooperate with and accept medical examinations, vocational rehabilitation, and selective employment provided by the employer pursuant to the Virginia Workers' Compensation Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission for unjustified refusal to accept medical examinations, vocational rehabilitation, and/or selective employment, the Board may, in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-2-36 shall be computed as if the member received the suspended payments; and should such member's unjustified refusal continue for one (1) year, all his rights to any future disability allowance shall cease. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Workers Compensation Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Section, an order of the Workers' Compensation Commission suspending compensation for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical examinations, vocational rehabilitation, and/or selective employment. (20-81-3; 36-88-3; 11-98-3.)

**Section 3-2-40. - Reduction of service-connected disability retirement allowance.**

- (a) Whenever the Board ascertains that any member receiving a service-connected disability retirement allowance is, prior to his normal retirement date, engaged in a work paying more than the difference between his disability allowance and the

current salary of the position from which he retired, the Board shall reduce such retirement allowance to an amount which, together with the amount earned by him, equal the amount of the current salary of the position from which he retired. A member receiving a service-connection disability retirement allowance must submit a copy of that portion of his federal income tax return showing the amount of his earned income, and he shall also be required to submit copies of all W-2 forms (wage statements) provided him by his employers to the Board by May 30th of each year. Should such member refuse to submit copies of his income tax return or W-2 forms to the Board, his retirement allowance shall be discontinued until his withdrawal of such refusal; and should his refusal continue for one (1) year, all his rights to any further service-connected disability allowance shall cease. The Board shall have the power to reduce the member's service-connected disability retirement allowance to an amount less than that provided in the first sentence of this Section, but not less than twenty-five dollars (\$25.00) a month, to recoup the amount of any overpayment from the System to the member on account of the member's earnings in excess of the maximum allowed under this Section.

- (b) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown.
- (c) Should the Medical Examining Board report and certify to the Board at any time that any member receiving a service-connected disability retirement allowance is able to engage in gainful occupation or work paying more than the difference between his retirement allowance and the current salary of the position from which he retired, and should the Board find that such member shall have refused an offer of employment considered by the Board suitable to his capacity, he shall not be entitled to any such allowance during the continuance of such refusal, unless in the opinion of the Board such refusal was justified. (20-81-3; 36-88-3; 27-90-3, § 1.)

### **Section 3-2-41. - Cessation of disability retirement allowance.**

- (a) Should a member received a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease and he or she shall again become a contributing member. Upon his or her return to service, he or she shall be given membership service credit for all creditable service that he or she had accumulated as of the effective date of his or her disability retirement. In addition, any member returning to service after a period of service-connected disability retirement shall be given membership service credit for the period of his or her service-connected disability retirement.
- (b) When a member returns to service under the circumstances described in Subsection (a), any excess accumulated contributions of such member over the disability retirement allowance received by him or her shall be transferred from the retirement allowance account to the member's contribution account.
- (c) Should the Board at any time determine that a member who is receiving an ordinary disability retirement allowance is no longer incapacitated, the Board shall promptly terminate his or her ordinary disability retirement allowance and notify the member in writing at his or her address as shown in the System's records.
  - (1) Such member may appeal the action of the Board under the provisions of Section 3-2-49.
  - (2) Within thirty (30) days of receipt of such notice, or within thirty days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her ordinary disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early retirement allowance. Such members shall be deemed to be in service during this thirty day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this thirty day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their ordinary disability retirement. The effective date of such member's normal or early service retirement pursuant to this Section shall be the effective date of termination of his or her ordinary disability retirement allowance.
- (d) Should the Board at any time determine that a member who is receiving a service-connected disability retirement allowance is (i) no longer incapacitated or (ii) no longer incapacitated due to an injury by accident and/or diseases which arose out of and in the course of his or her service, the Board shall promptly terminate his or her service-connected disability retirement allowance and notify the member in writing at his or her address as shown in the System's records.
  - (1) If at that time such member has five (5) or more years of creditable service and the Board determines that such member is presently incapacitated from further employment with his or her employer due to injury and/or disease(s) which did not arise out of and in the course of his or her service and such incapacity is likely to continue indefinitely, the Board shall grant such member an ordinary disability retirement allowance effective as of the date of termination of his or her service-connected disability retirement allowance. For purposes of determining their eligibility for such retirement and

calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement and shall receive membership service credit for the period of their service-connected disability retirement.

- (2) Any member whose service-connected disability retirement allowance has been terminated by the Board under this section may appeal the action of the Board under the provisions of Section 3-2-49.
- (3) Within thirty (30) days of receipt of such notice, or within thirty days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her service-connected disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early retirement allowance. Members whose service-connected disability retirement had been changed by the Board to ordinary disability pursuant to Subsection (d)(1) may apply for a normal or early service retirement allowance in lieu of the ordinary disability retirement allowance. Members shall be deemed to be in service during this thirty day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this thirty day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement. The effective date of such member's normal or early service retirement pursuant to this Section shall be the effective date of termination of his or her service-connected disability retirement allowance. (20-81-3; 27-90-3, § 1; 6-95-3; 14-98-3.)

### **Section 3-2-42. - Spouse retirement allowance.**

Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance, payable monthly for life shall be 50 percent of the annual retirement allowance provided in Subsections (a)(1) and (a)(2) of Section 3-2-32 with creditable service and average final compensation being determined as of the date of the member's death. Said spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive the benefits outlined above in this Section or a lump sum payment of the member's contributions, plus interest as provided in Section 3-2-28(c) herein; in the event no election is made, said spouse shall receive benefits in the form of a lump sum. If a death is due to a service-connected accident as defined in Section 3-2-37 and the designated beneficiary under Section 3-2-37(a)(1) and (a)(2) is the member's spouse, the spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive either the benefits contained in this Section or those contained in Section 3-2-37(a)(1). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's contribution plus interest, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the spouse's estate. (20-81-3; 5-85-3; 20-87-3; 29-09-3.)

### **Section 3-2-43. - Cessation of normal or early retirement allowance.**

- (a) The provisions of Subsection (b) apply to persons who are receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Police Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. The provisions of Subsection (c) apply to persons who are receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Police Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986. The provisions of Personnel Regulation 9-2-4 shall apply to persons covered by either Subsection (b) or (c) of this Section.
- (b) Should a person receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Police Retirement System ("retiree") return to regular service in a permanent position in any office or employment paid directly or indirectly by Fairfax County, he shall elect to receive such retirement allowance under the provisions of either Subsection (b)(1) or (b)(2) of this Section.
  - (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His allowance shall commence or resume upon application or reapplication by the retiree after he has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Uniformed or Police Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-2-44 which would have been payable had the retiree continued to receive his allowance without interruption. A retiree who elects in writing at the time of reappointment to a position covered by this Article not to become a member shall be exempted from this System. A retiree who elects in writing at the time of reappointment to a position covered by this Article to become a member shall be eligible:
    - (A) For recomputation of his allowance to take into account compensation and creditable service attributable to the period of reemployment resulting in a deferral or cessation of his allowance under this Section;

(B) To make new election for any optional benefit to which he is entitled; and

(C) For a retirement allowance for a service-connected disability arising out of and in the course of his reemployment.

A retiree of the Uniformed or Police Retirement Systems who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) Such allowance shall commence or shall not cease while the retiree is so employed. A retiree electing this option shall be excluded from membership in this System or any system covering the position, service in which results in the application of this Section.
- (c) A person receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Police Retirement System ("retiree"), may return to employment for which compensation is paid directly or indirectly by Fairfax County Subject to the following conditions:
- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115% of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Board is authorized and directed to reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he would receive if he had not elected a joint or last survivor option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board.
  - (2) A retiree who is employed in a position service in which would otherwise make him eligible for membership in this system, the Uniformed Retirement System, or the Police Retirement System, shall not be eligible for membership in that system
- (d) Notwithstanding any other provision of this or any other Article of this Chapter, a retiree may be employed in a position under his former appointing authority subject to the following terms and conditions:
- (1) If the retiree is a member of this System and service in the position to which he is to be re-appointed ordinarily would result in membership in this System, his normal or early retirement allowance shall be suspended for the duration of his new employment. During his new employment, he shall make member contributions to this System. At the time of his new employment, he shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his employment, he may apply for ordinary or service-connected disability retirement. In such case, his combined years of service and his average final compensation based on his new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his new employment, the retiree shall receive as his service retirement allowance the higher of (i) his initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his new employment or (ii) a service retirement allowance calculated on the basis of his combined years of creditable service in his initial and new employment and his average final compensation calculated on the basis of the creditable compensation that he received during both his initial and new employment as if there had been no break in service.
  - (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Uniformed or Police Retirement Systems but for his membership in this System, shall be subject to the provisions of either Subsection (b) or (c), whichever is applicable.
  - (3) If the retiree is a member of either the Uniformed or Police Retirement Systems and service in the position to which he is to be appointed would result in membership in this System but for his membership in the other system, the retiree shall be subject to the provisions of either Subsection (b) or (c), whichever is applicable.
  - (4) The provisions of this Subsection (d) shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of the Employees', Uniformed, or Police Retirement Systems. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 1; 10-01-3; 11-05-3.)

### **Section 3-2-44. - Cost-of-living adjustments.**

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of the benefit commencement; provided, however, that such adjustments shall not affect the amount of the Social Security benefit allowance payable pursuant to Section 3-2-32(a)(3)(A) or Section 3-2-32(a)(3)(B); and, provided further, that allowances for service-connected disability retirement shall be subject to the provisions of Subsection (d). The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection 3-2-44(a) of this Section and the

supplemental cost-of-living increase, if any, provided for in Subsection (b) of this Section with such increases reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

- (a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12 calendar month period ending with the March immediately proceeding the July in which the increase is effective. For the purpose of this Section, Consumer Price Index shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes Fairfax County, Virginia.
- (b) As part of each annual actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following July first based upon the available actuarial surplus. The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each of the July firsts by such actuarially determined percentage. For the purpose of this Section, "available actuarial surplus" shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the annual actuarial valuation of the System.
- (c) In the event a member has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in (a) and (b) above as follows:

Number of Complete Months Member Has Been in Pay Status	Percentage of Full Increase
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Less than 3 .....0%

3, 4 or 5 .....25%

6, 7 or 8 .....50%

9, 10 or 11 .....75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-2-36 have been made. The member's allowance after the adjustments of cost of living provided by the Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-2-36.
- (e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to benefits shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of benefits then being paid to any member or beneficiary who received benefits payments as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (20-81-3; 27-90-3, § 1; 1-93-3; 11-00-3; 26-10-3.)

**Section 3-2-45. - Social Security benefit proviso.**

If a member does not qualify for or loses primary Social Security benefits, to which he is entitled under the Federal Social Security Act, because of his failure to make application therefor or because of his violation of the Social Security Act, such primary Social Security benefits shall nevertheless be considered as being received by such member for the purposes of this Article. (20-81-3; 27-90-3, § 1.)

**Section 3-2-46. - Retention rights.**

Participation in the System does not convey the right to be retained in service, or any right or claim to any assets of, or benefit from, the System unless such right has Specifically accrued under the provisions of this Article. (20-81-3; 27-90-3, § 1.)

### **Section 3-2-47. - Vesting on termination of system; non-reversion of funds.**

Upon termination of the system or upon complete discontinuance of contributions to the system, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the system shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (20-81-3.)

### **Section 3-2-48. - Non-retroactivity to members terminating prior to July 1, 1981.**

With the exception of the benefit adjustment provided under Section 3-2-32(d)(2), the benefits provided by this Article, and the provisions of Section 3-2-43 shall not apply to members retired or terminated prior to July 1, 1981. Benefits for such members shall be in accordance with the ordinance in effect prior to July 1, 1981. However, retirement allowances determined thereunder shall be subject to the cost-of-living adjustments provided in Section 3-2-44. (20-81-3.)

### **Section 3-2-49. - Review of adverse decisions.**

- (a) Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of said notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board.
- (b) Notwithstanding the provisions of Subsection (a), upon written application of a member adversely affected by a decision of the Board and for good cause shown, the Board may reconsider such previous decision. This Subsection is to apply retroactively. (20-81-3; 36-83-3.)

### **Section 3-2-50. - Transfer to Senior Executive Service Plan.**

Repealed by 01-96-3.

### **Section 3-2-51. - Masculine usage includes the feminine.**

The masculine whenever used herein shall include the feminine. (20-81-3.)

### **Section 3-2-52. - Limitation on annual retirement allowance.**

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415 of the Internal Revenue Code and the Treasury Regulations issued thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of this Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Rev. Rul. 2001-62 (superseding and modifying Rev. Rul. 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 2; 10-91-3; 21-96-3; 8-03-3; 01-11-3.)

### **Section 3-2-53. - Distribution of benefits.**

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or will be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion will be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions will begin not later than one year after the date of the member's death or such later date as the Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained age 70½ and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules

specified in this paragraph shall be applied as if the surviving spouse were the member. Distributions from the System will be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G).

(27-90-3, § 2; 26-12-3; 50-13-3.)

### **Section 3-2-54. - Direct rollovers to other plans.**

- (a) General. This Section 3-2-54 applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section 3-2-54, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) Definition.
- (1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
  - (2) Eligible retirement plan. An eligible retirement plan is any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
  - (3) Distributee. A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee includes a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
  - (4) Direct rollover. A direct rollover is a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3)

### **Section 3-2-55. - Additional retirement allowance.**

- (a) For purposes of this section only, the following words and phrases shall have the following meanings:
- (1) Active member shall mean a member of this System who is an employee on July 1, 1995, or who becomes an employee thereafter, and whose membership in this System has not ceased at any time from either July 1, 1995, or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.
  - (2) Retired member shall mean a member of this System who is receiving a retirement allowance on July 1, 1995. The phrase "member of this System who is receiving a retirement allowance" includes those members whose effective date of retirement is on or before July 1, 1995.
  - (3) Retirement allowance shall mean a normal retirement allowance, an early retirement allowance, an ordinary disability retirement allowance, a deferred annuity under the provisions of Section 3-2-38(b), or a spouse retirement allowance under the provisions of Section 3-2-42.

- (4) Base annual retirement allowance means the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-2-7. For a member retired pursuant to Section 3-2-31(a) (normal retirement), this is the allowance calculated under Section 3-2-32(a)(1) (Plan A member) or 3-2-32(a)(2) (Plan B member); for a member retired pursuant to Section 3-2-31(b) (early retirement), the allowance calculated under Section 3-2-32(b); for a member retired on account of ordinary disability under Section 3-2-33, the allowance calculated under Section 3-2-34; for a member receiving a deferred annuity, the allowance calculated under the provisions of Section 3-2-38(b); and for a spouse receiving a spouse retirement allowance, the allowance calculated under the provisions of Section 3-2-42.
- (5) Adjusted base annual retirement allowance shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance provided under Section 3-2-42, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement, or of his or her election of the spouse retirement allowance, through July 1, 1995.
- (6) A member is "in service" for purposes of this Section when he or she is a member of this System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under the provisions of this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
- (c) When an active member retires, or the eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the provisions of the applicable section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under the provisions of this Article after July 1, 1995, shall be computed on the basis of his or her initial base annual retirement allowance.
- (d) If a member is entitled to the three percent (3%) increase provided for by either Subsection (b) or (c) and if at the time he or she is entitled to such increase, he or she is also eligible to receive the Pre-62 Compensating Benefit under Section 3-2-32(a)(3)(A) or the Pre-Social Security Benefit under Section 3-2-32(a)(3)(B), his or her Pre-62 Compensating Benefit or Pre-Social Security Benefit shall also be increased by three percent (3%).
- (e) Effect of separation from service.
  - (1) A member who:
    - (A) Separated from service other than by death or retirement with five (5) or more years of creditable service in this System prior to July 1, 1995, and
    - (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
    - (C) Subsequently applies for and is determined to be eligible for a deferred annuity after July 1, 1995,
 shall have his or her deferred annuity computed mutatis mutandi in the same manner as an active member under subsection (c).
  - (2) A member in service on or after July 1, 1995, who:
    - (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in this System, and
    - (B) Does not withdraw his or her accumulated contributions, and
    - (C) Subsequently applies for and is determined to be eligible for a deferred annuity,
 shall have his or her deferred annuity computed mutatis mutandi in the same manner as an active member under subsection (c).
  - (3) A member in service on or after July 1, 1995, who,
    - (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in this System, and
    - (B) Does not withdraw his or her accumulated contributions, and
    - (C) Thereafter, returns to service and again becomes a member of this System, and

- (D) Subsequently applies for and is determined to be eligible for a normal, early, or ordinary disability retirement allowance or for a deferred annuity, shall have his or her allowance or deferred annuity computed mutatis mutandi in the same manner as an active member under subsection (c).
- (4) A member in service on or after July 1, 1995, who
- (A) Thereafter separates from service, and
  - (B) Withdraws his or her accumulated members' contributions, and
  - (C) Subsequently returns to service and again becomes a member of this System, and
  - (D) At that time makes arrangements to purchase credit for all of his or her previous service in this System under the provisions of this Ordinance, and
  - (E) Thereafter applies for and is determined to be eligible for a normal, early, or ordinary disability retirement or for a deferred annuity, shall have his or her allowance or deferred annuity computed mutatis mutandi in the same manner as an active member under subsection (c).
- (f) A member's spouse who is receiving an allowance under the joint and last survivor option provided by Section 3-2-32(c), on July 1, 1995, shall have such allowance increased by three percent (3%), effective July 1, 1995. Adjustments to such allowance under the provisions of this Article after July 1, 1995, shall be computed on the basis of this increased allowance.
- (g) Notwithstanding the sixty percent (60%) of average final compensation limit contained in Section 3-2-34, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by subsection (c) may exceed sixty percent (60%), but shall not exceed sixty-one and eight-tenths percent (61.8%), of his or her average final compensation.
- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under the provisions of this Section shall be made which would violate the limitations provided by Section 3-2-52 concerning the limitations imposed by Section 415 of the Internal Revenue Code and the Treasury regulations issued thereunder; provided, however, that any adjustment under the provisions of this Section may be made up to those limitations. (12-95-3; 11-00-3.)

**Section 3-2-56. - Spousal acknowledgment.**

Any application for service or disability retirement allowance under this Article shall include a statement made by the spouse of the member, if any, acknowledging that the spouse has read and understands the provisions of this Article concerning allowance and payment options and the allowance and payment options, if any, the member has elected to receive. (12-98-3.)

**Section 3-2-57. - Deferred Retirement Option Program.**

Effective July 1, 2005, there is hereby established a Deferred Retirement Option Program ("DROP") for eligible members of this System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

- (a) Definitions.
  - (1) DROP period means the three-year period immediately following the commencement of the member's participation in the DROP.
  - (2) Eligible member means any member who has reached, or will reach within 60 days, his or her normal retirement date as defined in § 3-2-1(n).
- (b) Election to participate.
  - (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.
  - (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.
  - (3) At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to § 3-2-32(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.

- (4) An eligible member who elects to participate in the DROP will agree to do so for a period of three years.
- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-2-1(a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County or School Board in the position he or she held before the effective date of his or her election to participate in the DROP program. Thereafter, the participating DROP member will perform the services of that position or any other position to which he or she is promoted or transferred.
- (2) A participating DROP member will continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member will receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case will a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
- (3) A participating DROP member will continue to remain eligible for health and life insurance benefits provided by the County or the School Board to its employees and will remain eligible to participate in the County's or the School Board's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefit will be the same deductions that would have been taken had the participating DROP member been an active County or School Board employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
- (4) All County or School Board personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member will remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period will not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.
- (5) If a participating DROP member's continued employment with Fairfax County or the School Board is interrupted by military service, there will be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances will continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance will be paid to the member whether or not he or she has returned to his or her former County or School Board position, and the member will begin to receive his or her normal retirement benefits.
- (6) Except as otherwise set forth herein, a participating DROP member's continued service will be deemed to be normal service retirement and will not count as creditable service with the System.
- (7) Upon commencement of a participating DROP member's DROP period, the County or the School Board will cease to withhold contributions to the System from the participating DROP member's salary.
- (8) The salary received by a participating DROP member during his or her DROP period will not be included by the County or the School Board in the base that is used to determine the amount of the County's or the School Board's employer contributions to the System.

(d) DROP account.

- (1) Upon commencement of the participation of a member of either Plan A or Plan B, whose county or school board employment commenced by reporting for work before January 1, 2013, in the DROP, the member's service retirement allowance pursuant to § 3-2-32(a)(1) or (2) and the additional retirement allowance pursuant to § 3-2-32(a)(3) will be paid into the member's DROP account. Upon commencement of the participation of a member of either Plan C or Plan D, whose county or school board employment commenced by reporting for work on or after January 1, 2013, in the DROP, the member's service retirement allowance pursuant to § 3-2-32(a)(1) or (2) will be paid into the member's DROP account; the additional retirement benefits provided for in § 3-2-32(a)(3) shall

not be credited to the DROP accounts of members of Plans C and D, although members of those plans shall remain eligible to receive the additional retirement benefits provided for in § 3-2-32(a) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in §3-2-32(a)(3). The initial amount credited to a member's DROP account will be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount will be increased each July 1 based upon the annual cost of living adjustment provided to retirees pursuant to § 3-2-44. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement benefits and allowances if he or she were retired will also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
  - (3) The participating DROP member's DROP account will be credited with interest at an annual rate of five percent, compounded monthly. Interest will not be pro-rated for any period less than a full month.
  - (4) Contributions by the County or the School Board and the participating DROP member into the System for the participating DROP member will cease.
  - (5) Amounts credited to a participating DROP member's DROP account will not constitute annual additions under 26 U.S.C. § 415.
  - (6) A participating DROP member's DROP account will not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance will remain part of the assets of the System.
- (e) Cessation of County or School Board employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County or School Board employment will automatically cease. The participating DROP member shall then begin to receive normal service retirement benefits and allowances computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost of living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member must make one of the following elections concerning payment of his or her DROP account balance:
    - (A) The member may receive payment of his or her DROP account balance as a lump sum.
    - (B) The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.
    - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
    - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase will be determined based on the actuarial equivalent of the member's DROP account balance.
    - (E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement benefits and allowances, and to receive the remainder in any manner listed in paragraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this section, DROP account balance will be used to increase his or her monthly retirement benefits and allowances. The amount of the increase will be determined based on the actuarial equivalent of the member's DROP account balance.

- (2) A participating DROP member may terminate his or her County or School Board employment at any time, in which case the effective date of the member's termination of his or her County or School Board employment shall be treated as the end of the DROP period for the provisions of this section.
- (3) In the event that the employment of a participating DROP member is terminated by the County or the School Board during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.

- (f) Death or disability during DROP period.
  - (1) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of § 3-2-32(c), the participating DROP member's surviving spouse will receive payment of the participating DROP member's DROP account balance and will begin to receive benefits and allowances pursuant to the joint and last survivor option election of the participating DROP member.
  - (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member will receive:
    - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in § 3-2-33 and 3-2-35 the effective date of the member's disability will be treated as the end of the participating DROP member's DROP period.
    - (B) In the case that a participating DROP member suffers a service-connected disability as set forth in § 3-2-36, the participating DROP member may elect either (i) to receive the service-connected disability retirement benefits and allowances to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement benefits and allowances or severe service-connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (20-05-3; 40-08-3; 41-08-3; 27-10-3; 26-12-3.)

## **Division 9. - Benefit Restoration Plan.**

### **Section 3-2-58. - Benefit Restoration Plan.**

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
  - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by the federal Internal Revenue Code Section 415(m), 26 U. S. C. Section 415(m), as is permitted by Va. Code Ann. Section 51.1-1302. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Internal Revenue Code Section 415(b) as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to Participants, including the benefits established by this System.
  - (2) This section shall be construed to ensure compliance with the provisions of federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Internal Revenue Code Section 415(m) and Va. Code Ann. Sections 51.1-1302, 51.1-1303, and 51.1-1304, as in effect at the time of the adoption of this section and as subsequently amended.
- (c) Definitions.
  - (1) Administrator or Plan Administrator shall mean the Board of Trustees of the Employees' Retirement System, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board of Trustees, the Executive Director of the Retirement Administration Agency shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
  - (2) Beneficiary shall mean the person or persons entitled under the provisions of this Article governing this System to receive any benefits payable after the Participant's death.

- (3) Board shall mean the Board of Trustees of the Employees' Retirement System established under this Article.
  - (4) Internal Revenue Code means the federal Internal Revenue Code, as the same may be amended from time to time, and, to the extent not inconsistent therewith, regulations issued there under.
  - (5) Effective Date. The effective date of this section is its date of adoption.
  - (6) Eligible Member shall mean a retired member of the Employees' Retirement System and whose benefits thereunder are reduced by the application of the limitations on annual benefits under Internal Revenue Code Section 415(b) as applicable to governmental plans.
  - (7) Member shall mean a member of the Employees' Retirement System established under this Article.
  - (8) Employer shall mean an employer as defined under the Employees' Retirement System established under this Article.
  - (9) Enabling statute shall mean Chapter 13 of Title 51.1 of the Virginia Code (1950), as amended.
  - (10) Grantor Trust shall mean the trust fund described in sub-section (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
  - (11) Participant shall mean an Eligible Member qualified to participate in the Benefit Restoration Plan.
  - (12) Benefit Restoration Plan or Plan shall mean the Benefit Restoration Plan for the System established by this Section.
  - (13) Plan Sponsor shall mean the Board of Supervisors of Fairfax County, Virginia.
  - (14) Plan Year shall mean the 12-month period beginning on the first day of July.
  - (15) Restoration Death Benefit shall mean the benefit due the Beneficiary of a Participant under the Plan as determined under this Section.
  - (16) Restoration Retirement Benefit shall mean the benefit due a Participant or his or her Beneficiary under the Benefit Restoration Plan determined under this Section.
  - (17) Retirement System or System shall mean the Employees' Retirement System established under this Article.
- (d) Eligibility and Participation
- (1) Eligibility and Date of Participation. Each Eligible Member shall be a Participant in this Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an Eligible Member.
  - (2) Length of Participation. Each Eligible Member who becomes a Participant shall be or remain a Participant for so long as he or she is entitled to future benefits under the terms of this Benefit Restoration Plan.
- (e) Restoration Retirement Benefit
- (1) Subject to the terms and conditions set forth in this Section, a Participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a Restoration Retirement Benefit, generally expressed as a benefit payable monthly for the life of the Participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
    - (i) The amount of the Participant's retirement allowance under the Retirement System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
    - (ii) The amount of the Participant's retirement allowance under the Retirement System.

To the extent that the Participant's retirement allowance payable under the Retirement System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the Secretary of the U. S. Treasury or his or her delegate or otherwise, the Participant's Restoration Retirement Benefit shall be reduced correspondingly.

- (f) Death Benefit.
- (1) Death after Benefit Commencement. If a Participant dies after his or her Restoration Retirement Benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her Beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

- (2) Death before Benefit Commencement. If a Participant dies before his or her Restoration Retirement Benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the Restoration Death Benefit, if any, provided in sub-section (f)(3).
- (3) Restoration Death Benefit. Subject to the terms and conditions set forth herein, if a Participant dies on or after the Effective Date and before his or her Restoration Retirement Benefit commences to be paid, his or her Beneficiary shall be entitled to a Restoration Death Benefit as follows:
  - (A) If his or her Beneficiary is entitled to receive any death benefit under the Retirement System, such Beneficiary shall be entitled to receive as a Restoration Death Benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
    - (i) The amount of such death benefit under the Retirement System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
    - (ii) The actual amount of such death benefit under the Retirement System.

To the extent that the Participant's accrued benefit or any death benefit payable under the Retirement System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulations, actions of the Secretary of the Treasury or his or her delegate or otherwise, the Participant's Restoration Death Benefit shall be reduced correspondingly.

(g) Vesting.

- (1) Vesting. A Participant's Restoration Retirement Benefit or Restoration Death Benefit, as the case may be, shall be vested at the time of his or her retirement under the Retirement System or death, but only to the extent, and determined in the manner, that such Participant has a vested and non-forfeitable right to his or her retirement allowance under the Retirement System.

(h) Payment of Benefits.

- (1) Time and Manner for Payment of Benefits. A Participant's Restoration Retirement Benefit, or the Restoration Death Benefit, shall be payable at the same time and in the same manner as the Participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the Retirement System, whether as elected by the Participant or otherwise payable. For a Member who is receiving a retirement allowance under the System on the Effective Date, and who would immediately be an Eligible Member upon the Effective Date, such Member shall immediately commence receiving a Restoration Retirement Benefit on a prospective basis.
- (2) Discretionary Use of Other Methods of Payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
- (3) Benefit Determination and Payment Procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the Participant (or the Participant's Beneficiary in the event of the death of the Participant). The Administrator shall promptly notify the Employer and, where payments are to be made from a Grantor Trust, the trustee thereof, of each such determination that benefit payments are due and provide to the Employer or trustee such other information necessary to allow the Employer or trustee to carry out said determination, whereupon the Employer or trustee shall pay such benefits in accordance with the Administrator's determination.
- (4) Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
- (5) Distribution of Benefit When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a Participant or his or her Beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits

hereunder, or if there has been no such claim made for such benefits, the Employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

(i) Funding.

- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the Employer and subject to the claims of the Employer's creditors.
- (2) Except as provided in a Grantor Trust established as permitted in sub-section (i)(3), nothing contained in the Benefit Restoration Plan and no action taken pursuant to the provisions of this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the Employer and the Participant or his or her Beneficiary or any other person or to give any Participant or Beneficiary any right, title, or interest in any specific asset or assets of the Employer. To the extent that any person acquires a right to receive payments from the Employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the Employer.
- (3) Use of Grantor Trust Permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a Grantor Trust for the purpose of providing benefits under the Benefit Restoration Plan.

(j) Plan Administrator.

- (1) The Plan Administrator has full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the Enabling Statute. The Administrator has any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
- (2) The Plan Administrator is responsible for performing the duties required for the operation of the Benefit Restoration Plan, and is responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the Enabling Statute.
- (3) To enable the Plan Administrator to perform its responsibilities, Employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the Employer, and shall have no duty or responsibility to verify this information.
- (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director of the Retirement Administration Agency. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator must make such contracts in compliance with all applicable State and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan is subject to the supervision and direction of the Plan Administrator, and does not have the authority to control the operation of the Plan.

(k) Termination and Amendment of the Benefit Restoration Plan.

- (1) Termination of the Benefit Restoration Plan. The Board of Supervisors of the County of Fairfax, Virginia, hereby reserves the right to terminate this Benefit Restoration Plan at any time, provided that no such termination shall reduce, suspend, or terminate the Restoration Retirement Benefit or Restoration Death Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such termination.
- (2) Amendment of the Benefit Restoration Plan. The Board of Supervisors of the County of Fairfax, Virginia, hereby reserves the right to amend this Benefit Restoration Plan at any time, provided that no such amendment shall reduce, suspend, or terminate the Restoration Retirement Benefit or Restoration Death Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such termination.

(l) Miscellaneous.

- (1) Non-assignability. The interests of each Participant hereunder the Benefit Restoration Plan are not subject to the claims of the Participant's creditors; and neither the Participant nor his Beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- (2) Notwithstanding the preceding sub-section, the Plan Administrator shall honor any process for a debt to the Employer who has employed the Participant and any administrative actions pursuant to Va. Code Ann. Sections 63.2-1900, et seq., or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-2-6

of this Article mutatis mutandi. Restoration Retirement Benefits and/or Restoration Death Benefits created under this Section which are deemed to be marital property pursuant to Va. Code Ann. Sections 20-89.1 et seq. may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Va. Code Ann. Section 20-107.3. Under no circumstances may a payment under this sub-section take place before the Participant's benefit under the Retirement System is actually paid. (12-06-3.)