

ARTICLE 3. - Fairfax County Uniformed Retirement System.

Division 1. - Generally.

Section 3-3-1. - 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 employment commenced by reporting for work before January 1, 2013 (members of Plans A, B, 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.
- (2) For employees whose county employment commenced by reporting for work on or after January 1, 2013 (members of Plan E), 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 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 3-3-25.1, together with interest credited on such amounts and any other amounts he shall have contributed or transferred thereto as provided in Section 3-3-29(c).
- (c) Actuarial equivalent shall mean a benefit of equal value when computed on the basis of the 1971 Group Annuity Mortality Tables 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 three consecutive years (78 consecutive pay periods) of creditable service in which such compensation was at its greatest amount, or during the entire period of his creditable service if less than three years. In determining creditable compensation, premium payments such as overtime pay shall not be included. In determining average final compensation for members who retire on or after January 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 Plan E), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.
 - (1) Rule applicable to members ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without their consent, other than for training at the request of the member. If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-3-25(b) and he otherwise would have no creditable compensation attributable to some portion or all of such period of service, his average final

compensation shall be calculated as if he had continued to receive the creditable compensation as defined in this Article and approved and established for his position by the County Pay and Compensation Plan, including pickup contributions, during the period of military service for which he is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four years of military service commencing on or after August 2, 1990. The Board is authorized and directed to make any and all necessary retroactive adjustments to members' allowances as a result of this rule.

Notwithstanding the foregoing, whenever the Personnel 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 the Personnel Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations.

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

- (2) 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 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 regularly scheduled hours paid, credited at the base rate of pay but excluding premium pay such as all overtime, including Fair Labor Standards Act (FLSA) overtime and excluding performance bonuses. 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 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 3-3-25.1, plus accrued sick leave credit.
- (i) Employee shall mean any person regularly employed within the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical personnel in these Departments, or as a park police officer or Helicopter Pilot, rendering service to the County, and any person regularly employed within the Department of Public Safety Communications who transferred into this System pursuant to Section 3-2-19(e) or who were appointed to positions in the classes identified in Section 3-3-20(a)(4) on or after July 1, 2005, whose compensation is fully or partially paid directly or indirectly by the County.
- (j) Employer shall mean 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 the Board of Trustees of the System.

- (k) Medical Examining Board shall mean the physician or physicians provided for by Section 3-3-10 who may act individually or collectively.
- (l) Member shall mean any person included in the membership of the System as provided in Section 3-3-20.
- (m) Membership service credit shall mean credit for service rendered while a member of this System, or as otherwise provided in Section 3-3-24.
- (n) Normal retirement date shall mean either the member's 55th birthday, provided said member shall have completed six years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, Helicopter Pilot, or Sheriff, or the date the member completes 25 years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, Helicopter Pilot, or Sheriff. The normal retirement date for members who are former park police officers who elected to remain in this System pursuant to Section 3-3-20(b)(2) shall be computed in the same manner. "Creditable service" for these members shall include service both as a park police officer and as a police officer.
- (o) Pickup contributions shall mean regular member's contributions which are picked up, through a reduction in salary, 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 employment commenced by reporting for work on or before March 31, 1997, providing for current members of Plan A to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and three-fourths percent of compensation in excess of the taxable wage base; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A) and (B) or as provided for in Section 3-3-33(a)(2)(A). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55, at which time the full benefits prescribed in Section 3-3-33 and Section 3-3-45 shall become payable.
- (q) Plan B shall mean the provision effective July 1, 1981, allowing current members the option and requiring new members whose county employment commenced by reporting for work on or before March 31, 1997, to:
 - (A) Contribute seven and eight one-hundredths percent of compensation up to the taxable wage base and eight and eighty-three one-hundredths percent of compensation in excess of the taxable wage base; and
 - (B) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A), (B), and (C) or as provided for in Section 3-3-33(a)(2)(A) and (B). Cost-of-living adjustments provided for in Section 3-3-45 will be applied to this amount from the date of retirement. Additionally, 50 percent of the retirement allowance provided in Section 3-3-33(a)(1)(B) shall be payable from the date of retirement. Upon attainment of age 55, benefits shall be based on the provisions of Section 3-3-33(a)(1)(A) and (B).
- (r) Plan C shall mean the provision effective April 1, 1997, allowing then-existing members of Plan A who elect to transfer to Plan C prior to April 1, 1997, to:
 - (A) Contribute four percent of compensation; and
 - (B) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(C). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55, at which time the full benefits prescribed in Section 3-3-33 and Section 3-3-45 shall become payable.

- (s) Plan D shall mean the provision effective April 1, 1997, allowing then-existing members of Plan B, and requiring new members whose county employment commenced by reporting for work on or after April 1, 1997, but on or before December 31, 2012, to:
 - (A) Contribute seven and eight one-hundredths percent of compensation; and
 - (B) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 will be applied to this amount from the date of retirement.
- (t) Plan E shall mean the option effective beginning on January 1, 2013, requiring new members whose county employment commenced by reporting for work on or after January 1, 2013, to:
 - (A) Contribute seven and eight one-hundredths percent of compensation; and
 - (B) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 will be applied to this amount from the date of retirement.
- (u) Prior service credit shall mean credit for service rendered prior to the effective date of this Article, or as otherwise provided in Section 3-3-25.
- (v) Retirement allowance shall mean the retirement payments to which a member is entitled as provided in this Article.
- (w) Salary shall mean the compensation, including pickup contributions, established for each position as approved in the County Pay and Compensation Plan.
- (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) 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.
- (aa) System shall mean the Fairfax County Uniformed Retirement System.
- (bb) Early retirement shall mean the retirement upon completion of 20 years' service with an actuarial reduction of the normal pension accrued.
- (cc) Qualifying employment shall mean employment that qualifies an employee for participation in this Retirement System, and defined specifically to mean regular employment by the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical employment in these Departments, or as a Park Police Officer or Helicopter Pilot rendering service to the County, whose compensation is fully or partially paid directly or indirectly by the County. (1961 Code, § 9-72; 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 23-85-3; 36-88-3; 29-89-3; 27-90-3, § 3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 36-10-3; 27-12-3.)

Section 3-3-2. - Fairfax County Uniformed Retirement System established.

Under the authority of Chapter 4, Article 1, Title 51-112 of the 1950 Virginia Code, as amended, there is hereby established a retirement system for employees, to be known as the "Fairfax County Uniformed Retirement System" by and in which name it shall, pursuant to the provisions of this Article, transact all of

its business. The Fairfax County Uniformed Retirement System is intended to satisfy Internal Revenue Code §§ 401(a) and 414(d) requirements for qualified governmental pension plans.

(1961 Code, § 9-73; 11-74-9; 28-77-3; 51-13-3.)

Section 3-3-3. - Social Security Breakpoint.

For the purposes of computing retirement benefits and allowances under this System, Social Security breakpoint shall mean the average of the taxable wage base for the thirty-five (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.

Section 3-3-4. - Duties of appointing authorities.

The authority having the power to hire the services of a member shall keep such records 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 authority shall inform the member of his duties and obligations in connection with the system as a condition of employment. (1961 Code, § 9-74; 11-74-9.)

Section 3-3-5. - Acceptance of employment deemed consent to provisions of Article.

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. (1961 Code, § 9-75; 11-74-9; 5-85-3.)

Section 3-3-6. - Protection against fraud and deceit.

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. (1961 Code, § 9-76; 11-74-9.)

Section 3-3-7. - Assignment of benefits prohibited; non-attachable.

The right of any member to a retirement allowance, the return of accumulated contributions or any other right accrued or accruing to any person under the provisions of this Article and the money created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws 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. (1961 Code, § 9-77; 11-74-9; 3-80-3; 5-85-3; 13-92-3; 1-93-3.)

Section 3-3-8. - Error in records; corrections and adjustments.

Should any change or error in the records result in any member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records 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. (1961 Code, § 9-78; 11-74-9.)

Section 3-3-9. - 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 employees 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. (1961 Code, § 9-79; 11-74-9.)

Section 3-3-10. - Medical Examining Board.

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. (1961 Code, § 9-80; 11-74-9; 27-97-3.)

Section 3-3-10.1. - Post-employment physical examinations.

- (a) Any member or person eligible to participate in the Uniformed Retirement System who applies for service-connected disability retirement or severe service-connected disability retirement on or after July 1, 2004, shall disclose to the Board of Trustees any and all medical records and information, including, but not limited to any pre-employment or post-employment physical examination, any examination made relating to any claim under the Virginia Workers' Compensation Act and any and all other further tests or examinations required by the Board to assist it in its determination of whether the disability for which the member seeks retirement is service-connected or if it is the result of a preexisting condition.
- (b) Failure to disclose to the Board any medical record or information required hereunder or to undergo any further required tests or examinations shall preclude a member who does not disclose such medical records and information or such other further tests or examinations from receiving service-connected disability retirement as provided for in Section 3-3-36 and from receiving severe service-connected disability retirement as provided for in Section 3-3-37.2. (34-04-3.)

Division 2. - Board of Trustees.

Section 3-3-11. - 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. (1961 Code, § 9-81; 11-74-9.)

Section 3-3-12. - Membership; term of office.

- (a) The Board of Trustees of the system shall consist of 10 Trustees as follows: four Trustees appointed by the Board of Supervisors; two Trustees elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications; one Trustee elected by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and Helicopter Pilot members of the system; one Trustee elected by the retirees of the system; the Director of Finance, who shall be treasurer of the Board; and the Director of Personnel or the personnel officer responsible for employee benefits for Fairfax County.

- (b) With the exception of the Director of Finance, and the Director of Personnel, or the personnel officer responsible for employee benefits for Fairfax County, who shall be ex officio members of the Board, the terms of office of the Trustees shall be four years.
- (c) The only persons eligible to be elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications as Trustees are uniformed employees of the Fire and Rescue Department and employees of the Department of Public Safety Communications. The only persons eligible to be elected as a Trustee by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and Helicopter Pilot members of this system are uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and Helicopter Pilot members of this system. The offices of such trustees shall be vacated should such members separate from service prior to the completion of their term.
- (d) The only persons eligible to be elected as a Trustee by the retirees of the system are retirees of the system.

(1961 Code, § 9-82; 11-74-9; 20-81-3; 13-92-3; 40-93-3; 36-10-3; 59-13-3)

Section 3-3-13. - Vacancies in office.

If a vacancy occurs in the office of the Trustee of the system, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (1961 Code, § 9-83; 11-74-9.)

Section 3-3-14. - Compensation of Trustees.

The Trustees of the system may receive compensation at the rate set by the Board of Supervisors. (1961 Code, § 9-84; 11-74-9.)

Section 3-3-15. - Accountable to Board of Supervisors.

The Board of Trustees of the system shall be accountable to the Board of Supervisors. (1961 Code, § 9-85; 11-74-9.)

Section 3-3-16. - Functions of the 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, which shall be open to public inspection. It 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) At least once in each two (2) year period, beginning July 1, 1969, the Board shall cause an actuarial evaluation to be made of the system. (1961 Code, § 9-86; 11-74-9.)

Division 3. - Management of Funds.

Section 3-3-17. - Board trustee of funds; investment of same. [¶](#)

The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of this State 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 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. (1961 Code, § 9-87; 11-74-9.)

Footnotes:

--- () ---

9. As to investment of the funds of the System, see Va. Code Ann. § 51-112.1.

Section 3-3-18. - Treasurer fiscal officer of the 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, conditioned upon 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. (1961 Code, § 9-88; 11-74-9.)

Section 3-3-19. - 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. (1961 Code, § 9-89; 11-74-9.)

Division 4. - Membership in System.

Section 3-3-20. - Persons comprising membership.

(a) Membership shall be composed of the following:

- (1) Present employees, as hereinafter identified, except those listed in Subsection (2)(B) of this Section:
 - (A) All persons who were employees on the effective date of this Article or who were on leave from service on such date; or
 - (B) Any employee, otherwise qualified, who has been a member of another Fairfax County retirement system, and who has withdrawn therefrom, provided he pays into this system all contributions which would have been due from him had he been a member of this system, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought.
- (2) Future employees, as hereinafter identified, except those listed in Subparagraph (B) of this Section:
 - (A) All persons who hereafter shall become employees, persons receiving a normal or early retirement allowance from this System, the Employees' Retirement System (Article 2), or

Police Officers Retirement System (Article 7) eligible for membership only under the terms and conditions set forth in Section 3-3-43.

- (B) Exceptions. Employees who are members of the Virginia Retirement System and the Educational Employees Supplemental Retirement System (Article 4), the Fairfax County Employees' Retirement System (Article 2), or the Fairfax County Police Officers Retirement System (Article 7), and future 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 3-3-24. 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 3-3-24. Elected officials, who elect in writing at the time of their employment not to become members, shall be exempted from this System.
- (3) The membership in this System of uniformed employees of the Department of Animal Control transferred from the Employees' Retirement System to this System pursuant to the provisions of Section 3-2-19(d) shall commence on October 1, 1985, or date of appointment, whichever is later. For purposes of this Article, such members shall be deemed to have been appointed on or after January 1, 1984, regardless of being granted any membership service credit pursuant to Section 3-3-24. Uniformed employees of the Department of Animal Control, including the Director, appointed on or after October 1, 1985, shall become members of this System upon appointment.
- (4) The membership in this System of certain employees of the Public Safety Communications Center transferred from the Employees' Retirement System to this System pursuant to the provisions of Section 3-2-19(e), shall commence on October 1, 2005, or date of appointment, which ever is later. Employees of the Public Safety Communications Center appointed on or after July 1, 2005, in the class specification Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II or Public Safety Communicator I shall become members of this System upon appointment.
- (b) Provisions for transfer of park police members of the Fairfax County Uniformed Retirement System into the membership of the Fairfax County Police Officer's Retirement System (Police Retirement System):
- (1) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, shall, within 30 days of the adoption of this Subsection, make an irrevocable election, in writing, whether to remain members of this System or to transfer to the Police Retirement System.
- (2) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to remain as members of this System shall continue as members of this System.
- (3) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to transfer to the Police Retirement System shall cease to be members of this System and shall be members of the Police Retirement System as of January 22, 1983.
- (4) Members who elect to transfer to the Police Retirement System pursuant to subsection (b)(3) shall make a further election among the following options at the time of their election under Subsection (b)(1):

- (A) Withdraw the total of his accumulated member contributions (with interest) as of January 22, 1983, which shall be reduced by the amount of any retirement allowances previously received by him under any of the provisions of this Article. Any member contributions to this System after January 22, 1983, shall be transferred to the transferee's member account in the Police Retirement System. Said refund shall be paid to the member not later than 90 days from the date of receipt of the member's election by the Board; or
 - (B) If the member has five or more years of creditable service in this System on January 22, 1983, the member may leave his accumulated contributions as of January 22, 1983, in the fund and receive a deferred annuity commencing on the first of the month coinciding with or following the date the member attains age 55, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article; and any member contribution made to this System after January 22, 1983, shall be transferred to the transferred member's account in the Police Retirement System; or
 - (C) The member may transfer his accumulated contributions to the Police Retirement System to obtain prior service credit in that System pursuant to Section 3-7-20(b). In this case, the Board shall transfer the member's accumulated contributions (plus interest) as well as that portion of the retirement allowance account representing employer contributions to this System attributable to the member's service in this System to the Police Retirement System.
- (5) Members who are required by Subsection (b)(1) to make an election whether to transfer to the Police Retirement System who fail to do so within the 30-day period provided therein shall be deemed to have elected to continue in this System pursuant to Subsection (b)(1).
- (6) The participation in the System of former members who return to qualifying employment shall be determined in accordance with the following terms and conditions:
- (A) Former members who have not withdrawn their accumulated contributions from the System as provided in Section 3-3-39 shall return to membership in the plan to which they were contributing at the time their former employment ceased.
 - (B) Former members who withdrew their accumulated contributions from the System as provided in Section 3-3-39 subsequent to the cessation of their former employment shall become members of Plan D upon their return to qualifying employment. A former member may purchase membership service credit for the period of his prior employment, provided that he pays into this System all contributions that would have been due from him had he been a member of this System during the period of his prior 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 for periods of prior employment under this subsection must be made within one year after the former member returns to qualifying employment.
- (c) Members of this System who were deputy sheriffs and who as deputy sheriffs had been performing nursing and/or paramedical duties in the Office of the Sheriff and who when reassigned to civilian positions in the Office of the Sheriff allocated to one of the classes in the Correctional Health Nurse class series, shall, notwithstanding any other provision in this Chapter to the contrary, remain as members of this System so long as they remain in such positions and for so long as they remain so continuously employed in a position allocated to such classes in the Office of the Sheriff or in other positions covered by this Article.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five years of creditable service in this System and who is appointed to serve as a deputy county executive shall remain a member of this System, and shall not become a member of the Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (1961 Code, § 9-90; 11-74-9; 35-81-3; 22-83-3; 23-85-3; 36-86-3; 45-93-3, 10-01-3; 32-02-3; 23-05-3; 27-12-3.)

Section 3-3-21. - Cessation of membership.

The membership of any person in the system shall cease (1) if he ceases to be an employee for a period of five (5) years, or (2) upon separation and withdrawal of his accumulated contributions, or (3) upon death. (1961 Code, § 9-91; 11-74-9; 20-81-3)

Division 5. - Service Credit.

Section 3-3-22. - 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. (1961 Code, § 9-92; 11-74-9.)

Section 3-3-23. - 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. (1961 Code, § 9-93; 11-74-9.)

Section 3-3-24. - Membership service credit.

(a) Each member shall receive membership service credit for periods for which he or she received compensation and was a member of this System or after he last became a member in the event of a break in his membership provided that any former member of this System who ceased his or her county 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 which were 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 or for the period he is on service connected disability retirement; 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 Plans A, B, C, or D, who ceased his or her county 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, Plan E, 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 five Plans (A, B, C, D or E) that are part of the Uniformed Retirement System who ceased his or her county employment, but who left his or her accumulated member contributions in the System, must, upon his or her return to county employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of 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 the 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.

(1) Members who are former park police officers who elected to remain in this System under the provisions of Section 3-3-20(b)(2) shall receive membership service credit for service rendered

as a park police officer and for their service as a police officer, including time served as a police officer prior to their election pursuant to Section 3-3-20(b)(2).

- (2) Uniformed employees of the Department of Animal Control who transferred into this System pursuant to the provisions of Section 3-2-19(d) may purchase membership service credit in this System for service as a uniformed employee of the Department of Animal Control rendered prior to October 1, 1985, by making an election in writing pursuant to Subsection 3-2-19(d)(3) and paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Fairfax County Employees' Retirement System for the period for which membership service credit is sought. The Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within one year of the adoption of Section 3-2-19(d).
 - (3) With respect to employees of the Public Safety Communications Center who transferred into this System pursuant to the provisions of Section 3-2-19(e) and who purchase membership service credit in this System pursuant to Subsection 3-2-19(e)(3) and (5) by paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Fairfax County Employees' Retirement System, the Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, to be applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within three years of October 1, 2005.
 - (4) 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 Employees' Retirement System (Article 2), the Fairfax County Police Officers Retirement System (Article 7), and who withdraws therefrom 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 System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought. (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.)
 - (5) 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 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, (iii) a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code, or (iv) 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. To the extent that a rollover or direct transfer permitted under § 3-3-24 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.
- (b) A member shall also receive membership service credit for any period during which the member is taking leave without pay from the County service and is receiving compensation from the County for temporary total or temporary partial disability under the Virginia Workers' Compensation Act. (1961 Code, § 9-94; 11-74-9; 22-83-3; 23-85-3; 45-93-3; 36-94-3; 22-96-3; 10-01-3; 8-03-3; 23-05-3; 27-12-3.)

Section 3-3-25. - Credit for prior service.

- (a) The Board shall determine, as soon as practicable after the filing of statements of service, the service that the member is entitled to receive creditable service for. Credit for prior service need not have been continuous provided no break in service exceeded five years. When an employee again becomes a member after his prior membership has ceased, he shall enter the system as an employee not entitled to prior service credit. Members who have had a break in service shall receive full credit for all past County service; provided however, that no credit shall be given for a period of employment prior to a break in service in excess of five years.
- (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. (1961 Code, § 9-95; 11-74-9; 45-93-3; 30-09-3.)

Section 3-3-25.1. - 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 in 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 service 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 other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or 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, to permit any vested member of any such plan to purchase portability credit in the Fairfax County Uniformed Retirement System.
- (C) The purchase of portability credit in the Fairfax County Uniformed Retirement System pursuant to this section may only be made within 18 months of the date when an employee commences employment in a position covered by the Fairfax County Uniformed Retirement System, or within 18 months of the date of the enactment of this ordinance for County employees who are members of the Fairfax County Uniformed Retirement System on the date of the enactment of this ordinance.
- (D) In order to purchase portability credit in the Fairfax County Uniformed Retirement 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 Fairfax County Uniformed Retirement System. The Fairfax County Uniformed Retirement System will determine from the transferring plan the amount of the member's assets that would be subject to transfer to the Fairfax County Uniformed Retirement System. Based upon the amount subject to transfer, the Board of Trustees of the Fairfax County Uniformed Retirement System will determine the amount of portability credit that would be actuarially equivalent to the amount of the assets to be transferred to the Fairfax County Uniformed Retirement 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 portable 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 the Fairfax County Uniformed Retirement System equivalent to five years of service, the member will not become vested in the Fairfax County Uniformed Retirement System until his or her creditable service equals five years.
- (F) The purchase of portability credit in the Virginia Retirement System or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this section shall be accomplished upon the transfer of assets from the transferring plan to the Fairfax County Uniformed Retirement 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 the Fairfax County Uniformed Retirement System.
- (G) When a vested member of the Fairfax County Uniformed Retirement 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 the Uniformed Retirement System may transfer 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 the Uniformed Retirement System. In order to accomplish the transfer of assets from the Uniformed Retirement System to an accepting plan, the member must make application in writing to the Uniformed Retirement System. Upon the transfer of membership assets from the Uniformed Retirement System to the accepting plan, the member shall lose all rights to any benefits or allowances from the Uniformed Retirement 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 3-3-26. - Member contributions.

- (a) Each member shall contribute for each pay period for which he received compensation the amounts prescribed in this Section. Subsequent to December 22, 1984, Fairfax County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. The Board of Supervisors may, from time to time, revise the rates of member contributions.
- (b) All members of Plan A, who, before April 1, 1997, do not elect in writing to accept the provisions set forth in Section 3-3-26(d) below and Section 3-3-33(a)(2)(C) will be considered as participants in Plan A. Contributions shall be made equal to four percent (4%) of such creditable compensation per pay period until his creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions will be made equal to five and three-quarters percent (5¾%) of said member's creditable compensation per pay period.
- (c) All members of Plan B, who before April 1, 1997, do not elect in writing to accept the provisions set forth in Section 3-3-26(e) and Section 3-3-33(a)(2)(D), will be considered participants in Plan B. Contributions shall be made equal to seven and eight one-hundredths percent (7.08%) of such member's creditable compensation per pay period until his creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions will be made equal to eight and eighty-three one-hundredths percent (8.83%) of said member's creditable compensation per pay period.

- (d) All members of Plan A, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(C), will be considered participants in Plan C. Contributions shall be made equal to four percent (4%) of the member's creditable compensation per pay period.
- (e) All members of Plan B, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(D), and all new members who begin employment that qualifies them for participation in the Uniformed Retirement System on or after April 1, 1997, will be considered participants in Plan D. Contributions shall be made equal to seven and eight one-hundredths percent (7.08%) of the member's creditable compensation per pay period.
- (f) Notwithstanding any other provision of this Section, no pick up shall be made from any member's compensation if the employer's contribution required hereunder is in default.
- (g) The Board may modify the method of collecting the contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board 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.
- (h) All contributions required to be made under paragraphs (b), (c), (d) and (e) 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 purpose 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.
- (i) With the exception of the transfers between retirement plans specifically allowed as set forth above, no transfers between any of the Plans of the Uniformed Retirement System shall be permitted. (1961 Code, § 9-96; 11-74-9; 20-81-3; 34-81; 5-85-3; 48-96-3.)

Section 3-3-27. - 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 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. (1961 Code, § 9-97; 11-74-9; 23-85-3; 28-89-3; 48-96-3; 10-01-3; 16-02-3)

Division 7. - Assets of System.

Section 3-3-28. - 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 of two accounts, namely, "the members' contribution account," and "the retirement allowance account." (1961 Code, § 9-98; 11-74-9.)

Section 3-3-29. - 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. 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 Sections 3-3-26 and 3-3-27 shall be credited to the individual account of such member.
- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate of not less than two percent (2%) per annum on the accumulated contributions of the member; 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 (5) years.
- (d) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account. (1961 Code, § 9-99; 11-74-9; 5-85-3.)

Section 3-3-30. - 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 account 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 3-3-29 shall be transferred each year from the retirement allowance account to the members' contribution account. (1961 Code, § 9-100; 11-74-9.)

Section 3-3-31. - Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent (10%) of the total amount in the accounts of the system, on deposit in one or more banks or trust companies that are approved as depositories for County funds. (1961 Code, § 9-101; 11-74-9.)

Division 8. - Benefits and Conditions Thereof.

Section 3-3-32. - Service retirement.

- (a) Normal retirement. Any member in service who has attained the age of fifty-five (55) and has completed six (6) years of creditable service, or has completed twenty-five (25) 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, stating the time the retirement is to become effective. However, such effective date shall be subsequent to his last day of service, but not more than ninety (90) days subsequent to the filing of such notice.
- (b) Early retirement. Any member in service who has completed twenty (20) years of creditable service may retire pursuant to the procedures set forth in Subsection (a) of this Section.
- (c) Compulsory retirement. Repealed; provided however, any member in service who previously had reached compulsory retirement age but who had continued in service pursuant to the exemptions previously provided by the subsection may continue in service without regard to the limitations set forth in this subsection. (1961 Code, § 9-102, 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 14-87-3.)

Section 3-3-33. - Service retirement allowance.

- (a) Normal retirement. Upon service retirement after July 1, 1988, a member shall receive an annual retirement allowance, payable monthly as provided below:
 - (1) Effective the first of any month following the member's attainment of age 55 the annual retirement allowance payable for life shall consist of:
 - (A) For members of Plans A and B, an amount equal to two percent of the average final compensation, multiplied by the number of years of creditable service.
 - (B) In addition to the amount of retirement allowance provided in Subsection (A) of this Section, members of Plans A and B shall receive an additional amount payable monthly, equal to the primary Social Security benefit to which such member would be entitled under the provisions of the Social Security Act in effect on the date of the member's retirement if such member were then 65 years of age. Further, such additional retirement allowance shall be reduced by the amount of any Social Security benefits such member may become eligible to receive, at the earliest date of such eligibility. For purposes of this reduction the amount of Social Security benefits of a member shall be the amount he would have been eligible to receive, without regard to any disqualification resulting from the earned income of the member. The Social Security benefits, for all employees whose county employment commenced by reporting for work after July 1, 1976, will be determined on a pro rata basis as ratio of the number of years of creditable service in the County (numerator) and 25 years (the denominator). This number is never larger than one.
 - (C) For the participants in Plan B, the amount prescribed in Subsection (A) of this Section shall include cost-of-living adjustments provided for under Section 3-3-45 during the period between the member's retirement and his attainment of age 55.
 - (D) For members of Plans C, D and E, an amount equal to two and five tenths percent of the member's average final compensation multiplied by the number of years of creditable service.
 - (E) For participants in Plans D and E, the amount prescribed in Subsection (D) of this Section shall include cost-of-living adjustments provided for under Section 3-3-45.
 - (2) For members who retire before attaining the age of 55, the annual retirement allowance, payable during the period between retirement and the first of the month following such member's 55th birthday, shall be determined as follows:
 - (A) Plan A participants shall receive the amount provided for in Subsection (a)(1)(A) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday. Further, the additional allowance prescribed in Section 3-3-33(a)(1)(B) above shall not be included.

- (B) After undergoing the additional deductions through December 31, 1981, Plan B Participants shall receive the amount provided for in Subsection (a)(1)(A) of this Section subject to cost-of-living adjustments under Section 3-3-45 plus 50 percent of the additional allowance provided for under Subsection (a)(1)(B) of this Section.
 - (C) Plan C participants shall receive the amount provided for in Subsection (a)(1)(D) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday.
 - (D) Participants in Plans D and E shall receive the amount provided for in Subsection (a)(1)(D) subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.
- (3) In addition to the allowances provided in Subsections (a)(1) and (a)(2), for members of Plans A, B, C, D or E retiring after March 18, 2002, the allowances in (A) and (B) below, referred to as the Pre-Social Security Benefit, shall be payable until the first month after the member attains the age of eligibility for an unreduced social security retirement benefit. The Pre-Social Security Benefit shall not be subject to cost of living adjustments provided for under Section 3-3-45.
- (A) For the participants in Plan A and Plan B, an additional amount equal to two-tenths of one percent of average final compensation times years of service.
 - (B) For the participants in Plan C, D, and E, an additional amount equal to three-tenths of one percent of average final compensation times years of service.
 - (C) The Pre-Social Security Benefit provided herein shall not be credited to the DROP accounts of members of Plan E who elect to participate in the Deferred Retirement Option Program provided for in Section 3-3-57; 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. A amount which shall be determined in the same manner as for retirement at his normal retirement date 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 normal retirement date; provided, however, that for members who retire after July 1, 1988, the amount provided for in Subsection (a)(1)(B) shall not be reduced on the actuarial equivalent basis.
- (1) The allowance for participants in Plans A and C except those exempted under Subsection (b)(2) of this Section shall be reduced in accordance with the factors prescribed in Table 1.
 - (2) The allowance for participants in Plans B, D, and E and participants in Plans A and C whose age plus creditable service equal 75 shall be reduced in accordance with the factors prescribed in Table 2.
- (c) Joint and last survivor option. Before the normal retirement date, a member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance or a specified fraction thereof, continued after his or her death to the spouse, for his or her lifetime. 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 3. In the event a retired member has elected a reduced retirement allowance in consideration of continued allowance to his or her spouse after the member's death and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. In the event a retired member who has elected the joint and last survivor option shall be divorced from his or her spouse, and such former spouse waives his or her rights to the benefits of the election of the joint and last survivor option, the retired member may revoke his or her joint and last survivor election; such revocation must be accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the

joint and last survivor option election. Upon the provision of the request to revoke the election and the certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election to the Executive Director, the Retirement Administration Agency shall revoke the election and increase the member's retirement allowance to the amount it would have been had no joint and last survivor election ever been made. The effective date of the increase in the member's retirement allowance shall be the first of the month next following the submission of the request to revoke the election accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election.

TABLE 1
 FAIRFAX COUNTY UNIFORMED RETIREMENT PLAN
 Actuarial Reduction Factors That Would Apply to Participants
 With a Normal Retirement Age Requirement of 25 Years of Service
 (or, Attainment of Age 55, if Earlier) if They Are Permitted To
 Retire Early With a Reduced Pension After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE
 AT AGE 55 WITHOUT CATCH-UP PROVISION)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	65.83	71.56	77.79	84.57	91.94	100.00
39	65.83	71.57	77.80	84.58	91.95	100.00
40	65.85	71.58	77.81	84.59	91.96	100.00
41	65.88	71.60	77.82	84.60	91.97	100.00
42	65.93	71.63	77.84	84.61	91.98	100.00
43	65.99	71.67	77.87	84.63	91.99	100.00
44	66.07	71.73	77.91	84.66	92.00	100.00
45	66.17	71.81	77.97	84.69	92.02	100.00
46	66.29	71.91	78.04	84.73	92.04	100.00
47	66.45	72.03	78.13	84.79	92.07	100.00
48	66.64	72.18	78.24	84.86	92.10	100.00

49	66.86	72.36	78.37	84.95	92.14	100.00
50	67.13	72.57	78.53	85.05	92.19	100.00
51	72.81	72.81	78.71	85.18	93.11	100.00
52	78.92	78.92	78.92	86.29	92.97	100.00
53	85.48	85.48	85.48	85.48	92.41	100.00
54	92.50	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

TABLE 2
FAIRFAX COUNTY POLICE AND UNIFORMED RETIREMENT PLANS

Actuarial Reduction Factors That Would Apply to Participants
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Pension After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS
ARE EFFECTIVE AT RETIREMENT)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00

43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55						

TABLE 3
FAIRFAX COUNTY UNIFORMED RETIREMENT PLAN
Actuarial Adjustment Factors That Would Apply to Participants
With a Normal or Early Retirement Benefit Determined Under Section 3-3-33
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%	87%	0.7%	96%

75%	90%	0.6%	97%
66.67%	91%	0.5%	98%
50%	93%	0.4%	99%

(1961 Code, § 9-103; 11-74-9; 28-7-3; 20-81-3; 34-81-3; 36-83-3; 36-88-3; 29-89-3; 27-90-3, § 3; 48-96-3; 28-97-3; 13-98-3; 5-00-3; 17-02-3; 27-12-3; 51-13-3.)

Section 3-3-34. - Ordinary disability retirement.

- (a) Any member in service who has five (5) or more years of creditable service may, at any time before his normal retirement date, retire on account of disability, not compensable under the Virginia Workers' Compensation Act, upon written application to the Board, made by the member or his appointing authority, 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; 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 such application, mentally or physically incapacitated for the further performance of duty, and that such incapacity is likely to be permanent and that such member should be retired.
- (b) Any member not in service 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 within one (1) year of the date he ceased 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 employee not to have filed an application while in service.
- (c) In the event 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. (1961 Code, § 9-104; 11-74-9; 20-81-3; 48-96-3.)

Section 3-3-35. - Ordinary disability retirement allowance.

Upon retirement as provided for in Section 3-3-34 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. (1961 Code, § 9-105; 11-74-9; 28-77-3; 20-81-3; 48-96-3.)

Section 3-3-36. - Service-connected disability retirement.

- (a) Any member in service may, at any time before his normal retirement date, 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. The Board shall determine 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 Virginia Workers' Compensation Commission (formerly the Industrial Commission of Virginia), the Court of Appeals, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.

- (b) The member or his employer shall be required to 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 shall be required to apply for all Workers' Compensation and Social Security benefits to which he may be entitled. The member shall also be required to submit to the Board 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. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give weight to the decisions of the Virginia Workers' Compensation 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 such decision becomes final.
- (c) Any member otherwise eligible for retirement under Section 3-3-34, 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 3-3-34.
- (d) Any member who applied for service-connected disability retirement on or before the effective date of [Ord. No. 24-85-3] shall have his eligibility for such retirement governed by the provisions of this Section in effect on that date. Members applying thereafter shall have their eligibility determined by the provisions of this Section.
- (e) When an application for service-connected disability retirement has been submitted by a member or on his behalf by his employer, the appointing authority for the agency in which the member is employed must certify whether or not there exist any vacant positions within the agency the essential physical job functions of which the member could perform, with or without reasonable accommodation; this certification shall be provided to the member and to the Board. The appointing authority shall have a continuing obligation to notify the member and the Board if any such position becomes vacant between the time of the appointing authority's initial certification and the Board's action on the member's retirement application. Members who have applied for service-connected disability retirement who meet the physical requirements for such positions, with or without reasonable accommodation, and who can be retrained to fulfill the other requirements for any such position shall be given the option to accept such position and withdraw his application for service-connected disability retirement or to decline such position and proceed with his application for service-connected disability retirement. A member shall have seven days from the date of the appointing authority's certification that a position is available to make his election as to whether he will accept the position or proceed with his retirement application; the failure of the member to make such election shall constitute an election to proceed with his application for retirement. In the event that the member elects not to accept a position for which he has received notification, the appointing authority shall have no further duty to notify the member and the Board of any further positions that may subsequently become available. In the event that no such positions are vacant or the member elects not to accept a vacant position, the application for service-connected disability retirement shall proceed to a determination by the Board. The certification by an appointing authority that no such positions exist within his agency constitutes an application of specific County personnel policies, procedures, rules and regulations. (1961 Code, § 9-106; 11-74-9; 20-81-3; 24-85-3; 48-96-3; 34-04-3.)

Section 3-3-37. - Service-connected disability retirement allowance.

- (a) Any member who is receiving, or has been approved by the Board to receive, service-connected disability retirement, or who has applied for service-connected disability retirement, or whose employer has submitted as application for service-connected disability retirement for such employee as of

December 9, 1996, under the provisions of Section 3-3-36, shall receive an annual retirement allowance, payable monthly during his lifetime and continued disability, consisting of an amount equal to 66²/₃ percent of the salary the member received at the time of retirement. This allowance shall be reduced by 15 percent of the amount of any primary Social Security benefit to which the member is entitled under any Federal Social Security Act and by the amount of any compensation awarded under the Virginia Workers' Compensation Act ("the Act") to the member for temporary total or partial incapacity; provided, however, that no reduction shall be made to a member's service-connected disability retirement allowance due to the member's entitlement to Social Security disability benefits in whole or in part as the result of a disability other than the disability that served as the basis for the award of service-connected disability retirement.

- (b) Any member who submits an application for service-connected disability retirement, or for whom his employer submits such application under the provisions of Section 3-3-36 on or after December 9, 1996, shall receive an annual retirement allowance, payable monthly during his lifetime and continued disability, consisting of an amount equal to 40 percent of the salary the member received at the time of retirement. However, this allowance shall be reduced by 15 percent of the amount of any primary Social Security disability benefit to which the member is entitled under any Federal Social Security Act and by the amount of any compensation awarded under the Virginia Workers' Compensation Act ("the Act") to the member for temporary total or partial incapacity.
- (c) When the amount of a member's primary Social Security benefit has once been determined for purposes of applying the 15 percent reduction described in paragraphs (a) and (b) 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 an award of a cost-of-living increase to the 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.
- (d) If a member receives his compensation for temporary total or partial incapacity under the Virginia Workers' Compensation 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 3-3-36 shall be offset against the member's allowance under this Section; and, provided further that in the event the 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.

(1961 Code, § 9-107; 11-74-9; 28-77-3; 20-81-3; 34-81-3; 4-83-3; 36-88-3; 29-89-3; 1-93-3; 48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 67-13-3, § 1)

Section 3-3-37.1. - Joint and last survivor option for disability beneficiaries.

A member of this System who applied for an ordinary or service-connected disability retirement allowance, including those members who are determined to be eligible for severe service-connected disability retirement by the Board, on or after July 1, 1988, may, before his actual retirement date, elect the joint and last survivor option provided by Subsection 3-3-33(c). (36-88-3; 48-96-3.)

Section 3-3-37.2. - Severe service-connected disability retirement.

- (a) Any member in service may, at any time before his normal retirement date, be retired on account of a severe 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. The Board shall determine whether a member has suffered a severe disability as defined herein 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 Virginia Workers' Compensation Commission (formerly the Industrial Commission of Virginia), the Court of Appeals, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.
- (b) When a member or his employer submits a written application for service-connected disability retirement as set forth in Section 3-3-36, the Board shall determine whether the member meets the requirements for qualification to receive severe service-connected disability as set forth herein. Prior to submitting such application, the member shall be required to apply for all Workers' Compensation and Social Security benefits to which he may be entitled. The member shall also be required to submit to the Board 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. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation 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 90 days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to the provisions of Section 3-3-34. Any member otherwise eligible for service-connected disability retirement under Section 3-3-36 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to the provisions of Section 3-3-36.
- (d) Severe disability is defined as an impairment from the list below that permanently incapacitates the member from performing the necessary duties of the position in which he or she had been employed prior to sustaining the impairment.
 - (1) Schedule of impairments:
 - (A) Loss of both hands or both feet;
 - (B) Loss of one hand and one foot;
 - (C) Loss of one hand and the sight of one eye;
 - (D) Loss of one foot and the sight of one eye;
 - (E) Loss of the sight of both eyes;
 - (F) Paralysis, either paraplegia or quadriplegia;
 - (G) Cancers determined to be compensable by the Workers' Compensation Commission which were caused by documented contact with a toxic substance, pursuant to Virginia Code § 65.2-402(c);
 - (H) Loss of speech;
 - (I) Loss of hearing;
 - (J) A mental incapacity that meets the criteria for disability benefits under the Federal Old-Age Survivors' and Disability Insurance Act; or

(K) Hepatitis C.

(2) Loss means:

(A) With respect to a hand or foot, the dismemberment by severance through or above the wrist or ankle joint, or the partial dismemberment resulting in the loss of functional use of the partially dismembered hand or foot.

(B) With respect to sight, central acuity of 20/200 or less with the use of correcting lenses or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision that the widest diameter of the visual field subtends an angle no greater than 20 degrees. These standards apply to the affected eye if sight loss is claimed for one eye in combination with loss of a hand or foot, or to the better eye if sight loss is claimed for both eyes.

(C) With respect to hearing, a severe and irreversible bilateral loss of hearing that is not correctable with either the use of hearing aids or with corrective surgery.

(e) For the purpose of this Section only, the phrase "member in service" shall be defined to include a member who has not reached his or her normal retirement date and who has been retired on account of a service-connected disability pursuant to the terms of Section 3-3-36.

(f) A member for whom an application for severe service-connected disability is approved by the Board shall not be required to submit to medical re-evaluations as required by Section 3-3-40. (48-96-3; 19-01-3; 7-03-3; 34-04-3.)

Section 3-3-37.3. - Severe service-connected disability retirement allowance.

(a) Any member who retires pursuant to the provisions of Section 3-3-37.2 shall receive an annual retirement allowance, payable monthly during his lifetime, consisting of an amount equal to 90 percent of the salary the member was entitled to receive at the time of his retirement. This allowance shall be reduced by 15 percent of the amount of any primary Social Security benefit to which the member is entitled under any Federal Social Security Act and by the amount of any compensation awarded under the Virginia Workers' Compensation Act ("the Act") to the member for temporary total or partial incapacity.; provided, however, that no reduction shall be made to a member's service-connected disability retirement allowance due to the member's entitlement to Social Security disability benefits in whole or in part as the result of a disability other than the disability that served as the basis for the award of service-connected disability retirement.

(b) When the amount of a member's primary Social Security disability benefit has once been determined for purposes of applying the 15 percent reduction described in paragraph (a) 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 an award of a cost-of-living increase to the 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 Virginia Workers' Compensation 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 3-3-37.2 shall be offset against the member's allowance under this Section; and, provided further that in the event the 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.

(48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 68-13-3, § 1)

Note— Ordinance Number 47-08-3 amended this section to reduce the offset for the primary social security benefit from 40 percent to 30 percent. Section 2 of the Ordinance provides: "The effective date of this Ordinance amending Section 3-3-37.3 is July 1, 2008. The reduction of the offset for any primary Social Security benefit from 40% to 30% is to be applied to the calculation of the retirement allowance due to members who are receiving an allowance for severe service-connected disability under Section 3-3-37.2 on or after the effective date of this Ordinance. This change is prospective in application and is not retroactive. The Board of Trustees of the System and the staff of the Retirement Administration Agency are hereby authorized and directed to make all necessary changes in the calculation of a member's allowance to implement this amendment."

Section 3-3-38. - Service-connected accidental death benefit.

- (a) 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:
 - (1) For a member before retirement:
 - (A) The member's accumulated contributions, as provided in Section 3-3-29, Subsection (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 3-3-43; and
 - (B) 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.
 - (2) For a person on retirement:
 - (A) The member's accumulated contributions, as provided in Section 3-3-29, Subsection (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 3-3-33; and
 - (B) 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. (1961 Code, § 9-108; 11-74-9; 5-85-3.)

Section 3-3-39. - 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 he shall be paid the amount to which he is entitled not later than 90 days after receipt of his application by the Board. Should a member or a person retirement die, 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 3-3-33. Such designated beneficiary may be changed from time to time by written notice by the member, signed and filed with the Board.

- (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 55. Members who choose a deferred vested annuity are not eligible to receive the Social Security supplement.
- (c) 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 Employees' Retirement System (Article 2), or the Fairfax County Police Officers Retirement System (Article 7) prior to receipt of a refund amount may, under such rules and regulations as are adopted by the Board and by the board of the system of which he is eligible to become a member, 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. 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) under rules and regulations of the system of which he is eligible to become a member, elect in writing to roll over the amount of his refund 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.
- (d) 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. (1961 Code, § 9-109; 11-74-9; 20-81-3; 34-81-3; 5-85-3; 36-88-3; 45-93-3; 10-01-3; 01-11-3).

Section 3-3-40. - 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) 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 beneficiary prior to his normal retirement date to undergo a medical examination by the Medical Examining Board. Should such a beneficiary refuse to submit to any such medical examination or unreasonably and without just cause or excuse refuse medical attention recommended by the Medical Examining 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 disability allowance shall cease.
- (b) Members who are beneficiaries of service-connected disability retirement allowances pursuant to Section 3-3-36, 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 3-3-37, shall cooperate with and accept medical services or vocational rehabilitation and/or selective employment provided by the employer pursuant to the Virginia Workers' Compensation Act. In the event a member's periodic payments are suspended by the Workers' Compensation Commission of Virginia for unjustified refusal to accept medical services, vocational rehabilitation and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-3-37 shall be computed as if the member received the suspended payments. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Workers' Compensation Commission of Virginia 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 unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation training, and/or selective employment.

- (c) The requirement for medical examinations of disability retirees established in this Section is not applicable to retirees who are receiving severe service-connected disability retirement benefits pursuant to Section 3-3-37.2.

(1961 Code, § 9-110; 11-74-9; 28-77-3; 36-88-3.)

Section 3-3-41. - Reduction of service-connected disability retirement allowance.

Repealed by 11-94-3.

Section 3-3-42. - Cessation of disability retirement allowance.

- (a) Should a beneficiary of a disability retirement allowance return to service at any time prior to his normal retirement date, his disability retirement allowance shall cease, and he shall become of a member of the system and contributions, in accordance with Section 3-3-26, shall resume. Any service on the basis of which his disability retirement allowance was computed shall thereafter be counted as creditable service; and, in addition, the period of disability retirement shall be counted as creditable service for those on service-connected disability retirement.
- (b) Any excess accumulated contributions of such beneficiary over the disability retirement allowances received by him shall be transferred from the retirement allowance account to the member's contribution account. (1961 Code, § 9-112; 11-74-9; 5-85-3.)

Section 3-3-43. - 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 Employees' 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 Employees' 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.
- (b) Should a person receiving a normal or early retirement allowance from this System, the Employees' 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 Employees' or Police Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-3-55 which would have been payable had the retiree continued to receive his allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during the period of his reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member again during the period of his reemployment shall be eligible:
 - (A) For a recomputation of his allowance to take into account compensation and creditable service attributable to the period of reemployment during which his allowance was suspended 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 (in lieu of his service retirement allowance).

A retiree of the Employees' or Police Retirement System 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) The retiree may elect to continue to receive his service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' or Police Retirement System if either covers the position in which he is reemployed. If he is a retiree of this System and the position in which he is reemployed is covered by this System, he shall not be required to contribute to this System during his period of reemployment.
- (c) A person receiving a normal or early retirement allowance from this System, the Employees' 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 Employees' 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 appointed ordinarily would result in membership 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 Employees' or Police Retirement Systems but for his membership in this System, shall be subject to the provisions of Subsection (b) or (c), whichever is applicable.
- (3) If the retiree is a member of either the Employees' 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 this membership in the other system, the retiree shall be subject to the provisions of 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, § 3; 10-01-3; 11-05-3.)

Section 3-3-44. - Spouse retirement allowance.

- (a) 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 the first sentence of Subparagraph (a) of Section 3-3-33, with creditable service and final compensation being determined as of the date of the member's death. Said spouse shall elect within 90 days after notice by the Board of Trustees of the option of receiving the benefits outlined above in this Section or a lump sum payment of the member's accumulated contributions as provided in Section 3-3-39 herein, or within 180 days of the death of the member, whichever first occurs. If death is due to a service-connected accident as defined in Section 3-3-38, and the designated beneficiary under Section 3-3-38(1)(A) is the member's spouse, the spouse shall elect in writing within 90 days after the notice by the Board of Trustees, or within 180 days of the death of the member, whichever first occurs, to receive either the benefits contained in this Section or those contained in Section 3-3-38(1)(A). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's accumulated contribution, 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 the spouse's estate.
- (b) Should death occur to a member in service who has completed five 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 3-3-29(c), shall be paid to the designated beneficiary.
- (c) Should death occur to a member in service who has completed five years of creditable service and the member has no designated beneficiary, a lump sum payment equaling the member's accumulated 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 3-3-44(a) above.
- (d) 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. (1961 Code, § 9-113; 11-74-9; 28-77-3; 20-81-3; 5-85-3; 29-09-3; 01-11-3.)

Section 3-3-45. - 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 benefit commencement; provided, however, that such adjustments shall not affect the amount of the Social Security benefit allowance payable pursuant to Section 3-3-33(a)(1)(B) or Section 3-3-33(a)(2)(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 (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 month calendar period ending with the March immediately preceding 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 (CIP-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 biennial 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 two July first's based upon the available actuarial surplus. The trustees then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each of such July first's 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 biennial actuarial valuation of the System.
- (c) In the event a member receiving a retirement allowance 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 Benefit Has Been in Pay Status	Percentage of Full Increase
---	--------------------------------

Less than 30%

3, 4 or 525%

6, 7 or 850%

9, 10 or 1175%

- (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 3-3-37 have been made. The member's allowance after the adjustments for cost of living provided by this 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 3-3-37.
- (e) The County 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 allowances shall be due or payable to any member receiving a retirement allowance or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of the allowance then being paid to any member or beneficiary who has received allowances 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 ordinance in effect on June 30, 1981. (1961 Code, § 9-114; 11-74-9; 20-81-3; 1-93-3; 26-10-3.)

Section 3-3-46. - Social Security benefit proviso.

If a beneficiary does not qualify for or loses any 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 or because of any disqualification resulting from the earned income of the member, such primary Social Security benefit shall nevertheless be considered as being received by such beneficiary for the purposes of this Article. (1961 Code, § 9-115; 11-74-9; 20-81-3; 36-88-3.)

Section 3-3-47. - Retention rights.

Participation in the system does not convey the right to be retained in service, or any right or claim of any assets of the system unless such right has specifically accrued under the provisions of the system. (1961 Code, § 9-116; 11-74-9; 20-81-3.)

Section 3-3-48. - Vesting on termination of system; nonreversion 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. (1961 Code, § 9-117; 11-74-9; 20-81-3.)

Section 3-3-49. - Nonretroactivity to members terminating prior to July 1, 1974.

The benefits provided by this Chapter shall not apply to members retired or terminated prior to July 1, 1974, and their rights and benefits shall be determined under the ordinance in effect prior thereto. However, retirement allowances determined thereunder shall be subject to post-1974 cost of living adjustments. (1961 Code, § 9-118; 11-74-9; 20-81-3.)

Section 3-3-50. - Review of adverse decisions.

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 such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3.)

Section 3-3-51. - Transfer to Senior Executive Retirement Plan.

Repealed by 26-97-3.

Section 3-3-52. - Masculine usage includes feminine.

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

Section 3-3-53. - 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. 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, § 4; 21-96-3; 8-03-3; 01-11-3.)

Section 3-3-54. - 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, § 4; 51-13-3.)

Section 3-3-55. - Direct rollovers to other plans.¹

- (a) General. This Section 3-3-55 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 3-3-55, 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)

Footnotes:

--- () ---

10. Editor's note—Ord. No. 45-93-3 added § 3-3-54, which the editor has, redesignated § 3-3-55 since Ord. No. 27-90-3, § 4, had previously added § 3-3-54.

Section 3-3-56. - 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 became an employee thereafter, and whose membership in this System has not ceased at any time from 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 term "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 3-3-39(b), or a spouse retirement allowance under the provisions of Section 3-3-44.
 - (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 3-3-8. For a member retired pursuant to Section 3-3-32(a) (normal service), this is the allowance calculated under Section 3-3-33(a)(1) (post-age 55) or 3-3-33 (a)(2) (pre-age 55) less any additional allowance under Section 3-3-33(a)(1)(B); for a member retired pursuant to Section 3-3-32(b) (early retirement), the allowance calculated under Section 3-3-33(b), less any additional allowance under Section 3-3-33(a)(1)(B); for a member retired on account of ordinary disability under Section 3-3-34, the allowance calculated under Section 3-3-35; for a member receiving a deferred annuity, the allowance calculated under the provisions of Sections 3-3-39(b); and for a spouse receiving a spouse retirement allowance, the allowance calculated under the provisions of Section 3-3-44.
 - (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 3-3-44, 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 election of the spouse retirement allowance through July, 1, 1995.
 - (6) A member is "in service" for purposes 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 an 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). Future adjustments to the member's or spouse's retirement allowance under the provisions of this Article shall be computed on the basis of the initial base annual retirement allowance.
- (d) If a member is entitled to the three percent (3%) increase in the base retirement allowance provided 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 in whole or in part the additional allowance provided by Section 3-3-33(a)(1)(B) under any provision of this Article, such additional allowance shall be also 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 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 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 member's 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 Article, 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) The spouse of a member who retired on a normal, early or ordinary disability retirement who is receiving an allowance under the joint and last survivor option provided by Section 3-3-33(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 3-3-35, 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) shall not exceed sixty-one and eight-tenths (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 3-3-53 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.)

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

Effective October 1, 2003, 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 is, or will become within 60 days, eligible for normal service retirement benefits as those are defined in § 3-3-32(a).

(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 § 3-3-33(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 3-3-1(a)(1), 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 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 to its employees and will remain eligible to participate in the County'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 employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
- (4) All County 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 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 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 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 in the base that is used to determine the amount of the County's employer contributions to the System.

(d) DROP account.

- (1) Upon commencement of the participation of a member of the four plans that existed before January 1, 2013 (Plans A, B, C, and D), who was whose county employment commenced by reporting for work before January 1, 2013, in the DROP, the member's service retirement allowance pursuant to § 3-3-33(a) and the additional retirement allowance pursuant to § 3-3-56 will be paid into the member's DROP account. Upon commencement of the participation of a member of Plan E, who was whose county employment commenced by reporting for work on or after January 1, 2013, in the DROP, the member's service retirement allowance pursuant to § 3-3-33(a) will be paid into the member's DROP account; the additional retirement benefits provided for in § 3-3-33(a)(3) shall not be credited to the DROP accounts of members of Plan E, although members of Plan E shall remain eligible to receive the additional retirement benefits provided for in § 3-3-33(a)(3) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in § 3-3-33(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 § 3-3-45. 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 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 employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County 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 an "eligible retirement plan," as defined in Section 3-3-55(b)(2).
 - (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, the member will receive payment of his or her DROP account balance as a lump sum.

- (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County 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 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) (A) 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 § 3-3-33(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.
 - (B) If a participating DROP member dies during the DROP period, and the participating DROP member's death is a service-connected accidental death as set forth in § 3-3-38, the member's beneficiary shall receive the benefits provided for in § 3-3-38(a)(1); if there is no designated beneficiary on record with the System, payment of these amounts shall be to the member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of § 3-3-33(c), the participating DROP member's surviving spouse will receive the benefits provided for in § 3-3-38(a)(1)(B) and the participating DROP member's DROP account balance, and will begin to receive benefits and allowances pursuant to the joint and last survivor 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 § 3-3-35, 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 § 3-3-36 or a severe service-connected disability as set forth in § 3-3-37.2, the participating DROP member may elect either (i) to receive the service-connected disability retirement benefits and allowances or the severe 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. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 27-12-3.)

Section 3-3-58. - Increased retirement allowance for certain retired members.

- (a) For the purposes of this section only, the following words and phrases shall be defined as set forth herein:
- (1) Retired member shall mean a member of this System whose effective date of his or her retirement was on or before March 18, 2002.
 - (2) Retirement allowance shall mean a normal retirement allowance, an early retirement allowance, an allowance to a surviving spouse pursuant to the joint and last survivor option set forth in § 3-3-33(c), or a spouse retirement allowance pursuant to § 3-3-44(a).
 - (3) Spouse receiving a spouse allowance shall mean a member's surviving spouse who was, on or before March 18, 2002, entitled to receive a spouse retirement allowance pursuant to § 3-3-44(a).
 - (4) Base annual retirement allowance shall mean the initial calculation of a member's retirement allowance, a surviving spouse's allowance pursuant to the joint and last survivor option pursuant to § 3-3-33(c), or a spouse's annual retirement allowance pursuant to § 3-3-44(a), without regard to any deductions for withholding or other benefit elections or adjustments under § 3-3-8.
 - (A) For Plan A members retired pursuant to § 3-3-32(a) (normal retirement), this shall be the allowance calculated pursuant to the terms of § 3-3-33(a)(1)(A) and (B) as in effect on the effective date of their retirement;
 - (B) For Plan B members retired pursuant to § 3-3-32(a) (normal retirement), this shall be the allowance calculated pursuant to the terms of § 3-3-33(a)(1)(A), (B) and (C) as in effect on the effective date of their retirement;
 - (C) For Plan C members retired pursuant to § 3-3-32(a) (normal retirement), this shall be the allowance calculated pursuant to the terms of § 3-3-33(a)(1)(D) as in effect on the effective date of their retirement;
 - (D) For Plan D members retired pursuant to § 3-3-32(a) (normal retirement), this shall be the allowance calculated pursuant to the terms of § 3-3-33(a)(1)(D) and (E) (Plan D members) as in effect on the effective date of their retirement;
 - (E) For Plan A and C members retired pursuant to § 3-3-32(b) (early retirement) whose age plus creditable service as of the effective date of their retirement was less than 75 years, the allowance calculated pursuant to the terms of § 3-3-33(b)(1) as in effect on the effective date of their retirement;
 - (F) For Plan B and D members and for Plan A and C members whose age plus creditable service was greater than or equal to 75 years as of the effective date of their retirement retired pursuant to § 3-3-32(b) (early retirement), the allowance calculated pursuant to the terms of § 3-3-33(b)(2) as in effect on the effective date of their retirement; or
 - (G) For a surviving spouse receiving an allowance pursuant to the joint and last survivor option, the allowance calculated pursuant to the terms of § 3-3-33(c) as in effect on the effective date of the member's retirement; or

- (H) For a spouse receiving a spouse allowance, the allowance calculated pursuant to the terms of § 3-3-44(a) as in effect on the date of the commencement of payment of the spouse allowance.
- (5) Adjusted base annual retirement allowance shall mean the base annual retirement allowance as set forth in subparagraph 4 above as increased by any cost-of-living adjustments applied to the base annual retirement allowance from the effective date of the retired member's retirement or of the commencement of the receipt of a spouse allowance through December 31, 2003.
- (b) Effective January 1, 2004, the adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance shall be increased as follows:
 - (1) For Plan A members, by 23 percent;
 - (2) For Plan B members, by 15 percent;
 - (3) For Plan C members, by five percent;
 - (4) For Plan D members, by five percent;
 - (5) For spouses receiving spouse allowances pursuant to § 3-3-44(a), by ten percent; or
 - (6) For surviving spouses receiving allowances pursuant to the joint and last survivor option set forth in § 3-3-33(c), by ten percent.
- (c) No increased retirement allowance calculated pursuant to the terms of this Section shall violate the limitations on annual retirement allowances set forth in § 3-3-53.
- (d) For those persons eligible to receive the increased retirement allowance pursuant to this Section, cost-of-living adjustments pursuant to § 3-3-45 and made after January 1, 2004, will be calculated based upon the increased retirement allowance set forth in this Section. (43-03-3.)

Division 9. - Benefit Restoration Plan.

Section 3-3-59. - 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 Uniformed 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 Uniformed 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 Uniformed 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 Uniformed Retirement System established under this Article.
 - (8) Employer shall mean an employer as defined under the Uniformed 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 Uniformed 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 subsection (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 3-3-7 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.)