

# ACT NO. 6794

BILL NO. 26-0071

## TWENTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS

### Regular Session

2005

To amend title 3 Virgin Islands Code, chapter 27, to enact the Retirement System Reform Act of 2005

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**BE IT ENACTED** by the Legislature of the Virgin Islands:

**SECTION 1.** Title 3 Virgin Islands Code, chapter 27, section 701, is amended in the following instances:

1. Add a sentence to the end of section 701, subsection (c) to read:

“The debts, obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts, funds, facilities, and property of the system are those of the system and not those of the Government of the Virgin Islands or of any office, bureau, department, agency, commission, municipality, branch, agent, officer, or employee thereof.”

2. Add subsections (f) and (g) to section 701 to read:

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

(g)(1) The Board shall provide the Legislature with an analysis of the assets and liability implications of each bill that would affect the investment strategy of the system, the funding of the system, or the benefit structure of this system. The analysis shall include an explanation of the methodology employed and the assumptions used in its preparation. The Legislature shall provide the necessary funding for the analysis of the system for bills proposed by the Legislature.”

**SECTION 2.** Title 3 Virgin Islands Code, chapter 27, section 702, is amended in the following instances:

1. In the first paragraph, after the word, "context" insert "or a different definition has been provided elsewhere in the chapter";

2. subsection (b) is amended by adding at the end of the sentence "and its agencies and instrumentalities";

3. subsection (c) is amended by adding at the end of the sentence "and its agencies and instrumentalities";

4. subsection (o) is amended by striking "three" and inserting "five";

5. subsection (s) is amended by striking "July 1" and inserting in its stead "October 1" and by striking "June 30" and by inserting "September 30" in its stead;

6. subsection (x) is amended by adding at the end of the subsection the following language, "for the purposes of this subchapter only"; and

7. subsection (y) is amended by adding at the end of the subsection the following language, "for the purposes of this subchapter only".

**SECTION 3.** Title 3 Virgin Islands Code, chapter 27, section 704, is amended in the following instances:

1. Section 704, subsection (a) is amended by adding a sentence at the end of the subsection to read:

"Additionally, the member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, and the income the system would have earned had those contributions remained in the system, and the interest on the unpaid balance, if the member elects to redeposit on an installment basis. If the member elects to repay on an installment basis, the member shall have the maximum of 36 months. The member shall repay the withdrawn contributions and the applicable interest before receiving his annuities."

2. Section 704, subsection (d), is amended by designating the existing language as paragraph (1) and adding paragraph (2) to read:

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

3. Section 704, subsection (f), is amended by adding a sentence at the end of the subsection to read:

"The member shall pay to the system the income the system would have earned had those contributions been paid to the system during the period of his approved leave of absence without compensation, and the interest on the unpaid balance, if the member

elects to deposit on an installment basis. If the member elects to pay on an installment basis, the member shall have the maximum of 36 months and before any retirement benefits are received to pay the contributions and applicable interest.”

4. Section 704, subsection (h) is deleted and is reserved for future use.

5. The language of section 704, subsection (i) is deleted and the following new language is inserted in lieu thereof:

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

6. Section 704, subsection (j), is repealed and a new subsection (j) is inserted in lieu thereof to read:

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

7. Add new subsections (l) (m) (n) (o) (p) (q) (r) (s) and (t) to section 704 to read:

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

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

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

balance not received by the Benefits Division on or before October 1 of each year.

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

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

(q) Retirement contributions paid for a prior period, whether by employer or by member, must be charged a delinquent fee of 1.5% for each calendar month or part thereof that paid contributions should have been paid. This includes prior period contributions due to incorrect wages and contributions from an earlier report or wages and contributions that should have been reported, but were not. This delinquent assessment may not be waived. If the delinquent assessment is not remitted within thirty days following the Benefits Division invoice, an additional delinquent assessment of 1.0% on the invoice amount shall be assessed for each calendar month or part thereof that the invoice is delinquent.

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

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

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

**SECTION 4.** Title 3 Virgin Islands Code, chapter 27 is amended in section 705 subsection (a) by striking "90" and inserting in its stead "60"; and in subsection (b) by striking the phrase, "provided, however that the Department Head may waive the three month requirement".

**SECTION 5.** Title 3 Virgin Islands Code, chapter 27, section 707, is repealed and a new section 707 is added to read:

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

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

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

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

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

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

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

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

(g) A member may designate one or more person as beneficiary. If more than one beneficiary is designated under an optional settlement involving life contingency of a

beneficiary, the member shall be deemed to have elected the optional settlement on an equal portion of his allowance independently for each beneficiary.

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

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

(2) Optional Settlement 2 - The member has the right to have a retirement allowance paid to him until his death and thereafter to his beneficiary for life.

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

**SECTION 6.** Title 3 Virgin Islands Code, chapter 27, section 708 is amended in the following instances:

1. In section 708, subsection (a), strike the words “after the date of the accident”, which appear after the words “six months” and insert in lieu thereof the words, “after being advised that he is permanently and totally incapacitated for service”.

2. Add a subsection (c) to section 708 to read:

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

3. Add a subsection (d) to section 708 to read:

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

**SECTION 7.** Title 3 Virgin Islands Code, chapter 27, section 710 is amended by adding a subsection (e) to read:

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

**SECTION 8.** Title 3 Virgin Islands Code, chapter 27, is amended by adding a section 710a to read:

“§710a (a) The Board of Trustees shall establish a Committee of Medical Review to conduct hearings of disability claims pursuant to sections 708 and 710 of this chapter, and to assure fair and impartial evaluation of all claims for permanent disability retirement benefits. The Committee of Medical Review shall consist of no more than seven physicians who are licensed by the Board of Medical Examiners pursuant to title 27 Virgin Islands Code, section 32. Each physician must be retained by contract. Any member of the Committee of Medical Review shall refrain from participation when it is clear that he may have a conflict of interest on a particular case. When a member recuses himself, the Committee shall conduct its work with a majority of the seven members of the committee. The Committee of Medical Review, its substitutes, and its employees may not be held personally liable for any conclusion, advice, or recommendations made in accordance with the duties of the Committee of Medical Review. The substitutes shall serve at the pleasure of the Board of Trustees and shall be paid at a rate of compensation set by the Board of Trustees.

(b) The Committee of Medical Review shall:

(1) review all reports and medical examinations required by this chapter;

(2) investigate all essential health and medical statements and certificates filed in connection with an application for disability retirement benefits; and

(3) submit to the Board of Trustees a written report of its conclusions and recommendations on all matters referred to it.

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

**SECTION 9.** Title 3 Virgin Islands Code, chapter 27, section 712 is amended in the following instances:

1. Section 712, subsections (a) and (e) are deleted and the following new subsections are inserted in lieu thereof:

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

(e) Upon death of a member occurring while in service, the deceased member’s surviving spouse shall be entitled to a payment of the accumulated contributions of the member. The accumulated contributions of the deceased are not payable to a surviving spouse who is entitled to a duty-connected death annuity. If there

is no surviving spouse, the death benefit as provided in subsections (a) and (b), whichever is applicable, is payable.”

2. In section 712, subsection (d), insert a period (.) after the first occurrence of the word “member” and strike the words, “provided the beneficiary has an insurable interest in the life of the member”.

**SECTION 10.** Title 3 Virgin Islands Code, chapter 27, section 713 is amended in the following instances:

1. In section 713, subsection (a), insert a comma (,) after the first occurrence of the word “contributions”, and strike the words “plus four percent interest” and insert in lieu thereof “plus regular interest”.

2. Strike the second and third sentences in section 713, subsection (b) and insert the following language in lieu thereof:

“Additionally, the member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, the income the system would have earned had those contributions remained in the system, and the interest on the unpaid balance, if the member elects to redeposit on an installment basis, provided the payments do not exceed a period of five consecutive years.”

**SECTION 11.** Title 3 Virgin Islands Code, chapter 27, section 715 is amended in the following instances:

1. In the sixth sentence of subsection (a), strike “one” where it first appears and insert “two” in lieu thereof; and after the word “System” where it first appears insert the following: “, elected through a process to be determined and conducted by the system,”

2. Add a sentence at the end of the first paragraph of section 715, subsection (a) to read:

“All members of the Board of Trustees, who are employees of the Government of the Virgin Islands or of any of its instrumentalities, shall be automatically granted administrative leave to attend Board meetings or whenever they are in the process of conducting any official business of the Board of Trustees as designated by the chairperson of the Board.”

3. Strike the word “three” in the seventh sentence of the first paragraph, of subsection (a) and insert the word “five” in lieu thereof.

4. Insert the following language after the word “term” at the end of the third to last sentence of subsection (a):

“Notwithstanding the date on which any member’s term expires, all members shall serve until their successors are appointed and approved.”



5. Designate the second paragraph of subsection (a) as paragraph (1) and amend the second paragraph of subsection (a) by striking "\$50" and inserting "\$75" and by striking "\$3000" and inserting "\$5000".

6. Add paragraph (2) to read:

"(2) With the exception of the two members from the Central Labor Council, members of the Board of Trustees shall have at least five years experience and a least a bachelor's degree in any of the following: investment banking; economics; finance; insurance; law; medicine; accounting; actuarial science; taxation; real estate appraisal or brokerage and securities trading."

7. Section 715, subsection (b) paragraph (7) is amended by deleting the semicolon (;) after the word "chapter" and inserting a period (.) in lieu thereof and adding the following sentence:

"No member of the Board of Trustees may, during any process involving the request for proposals or the selection of any vendor or contractor for goods or services by the board, communicate concerning any matter relating to the request for proposals or selection with any applicant or bidder, or an officer or employee of any applicant or bidder, outside of the application or bidding process. This section applies to investment products, including but not limited to, bonds, real estate, and stocks.

8. Add paragraphs (9) (10) and (11) to subsection (b) to read:

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

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

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

9. Amend subsection (c) by inserting thereafter the following paragraphs to read:

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

(2) Any exempt employee whose termination or suspension is recommended must be informed in writing. Within ten days after being served notice of termination or suspension, the employee shall have the opportunity to appeal the decision of the

Administrator to the Board of Trustees. After considering the evidence presented by the Administrator and the employee, the Board of Trustees may affirm or reverse the recommendation of termination or suspension of the employee.

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

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

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

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

10. Section 715 is amended by adding a subsection (i) to read:

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

11. Section 715 is amended by adding a subsection (j) to read:

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

**SECTION 12.** Title 3 Virgin Islands Code, chapter 27, section 717, subsection (b), is amended in the following instances:

1. Paragraphs (4) (5) (6) and (16) are amended by striking the alphabetic character, "A" in each subparagraph and by inserting in lieu thereof, "BBB".

2. The following language is inserted at the beginning of the subsection:

"The Board is vested with the discretionary investment strategy authority to vary the investment criteria set out in this section by no greater than 25% of the aggregate

amounts specified. However, the Board is prohibited from changing the securities ratings specified in this section. The Board of Trustees shall make investment decisions in accordance with the 'prudent man standard.'

3. Paragraph (9) is amended by adding a sentence at the end of the first paragraph to read:

"However, notwithstanding any other provision of law, the Board of Trustees may establish a domestic trust that will meet applicable U.S. Internal Revenue Code provisions, for the purpose of receiving, holding, paying, and transferring assets of the system on the continental U.S. mainland."

4. Paragraph (11) is amended by capitalizing all of the subparagraphs designators and inserting subparagraph (N) to read:

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

5. Paragraph (12) is amended by capitalizing all of the subparagraphs designators and inserting subparagraph (H) to read:

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

6. Paragraph (17) is amended by striking the language in the current and inserting new language to read:

"(17) If the Board determines during any fiscal year that compliance with this section will result in lower overall earnings for the fund than are obtainable from

alternative investment opportunities that would provide equal or superior security, including guarantee of yield, the Board may substitute those higher yielding investments, to the extent actually available for acquisition, for the investments otherwise specified by this section. Additionally, if adherence to the diversification guidelines specified in this section would conflict with the Board's fiduciary obligations, or would conflict with the standards for prudent investment of the fund, the Board may substitute alternative investments. In that case, the Board shall estimate the amount of funds available for investment in substitute alternative investments and the amount of funds invested pursuant to this section and shall submit a statement with regard to alternative investments, reporting the description of the type, quantity, and yield of the investments substituted in its annual report to the Legislature. All investment decisions made pursuant to this section shall be made in accordance with the prudent investor standard.'

7. Paragraphs (18) and (19) are added to read:

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

(19) Alternative Investments

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

**(A) General; definitions**

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

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

- (i) Private Equity**
  - Venture Capital
  - Mezzanine
  - Acquisition/Buyouts
  - Restructuring
  - Subordinated Debt
  - Special Situations
- (ii) Natural Resources**
  - Oil and Gas
  - Agriculture
- (iii) Managed Futures/Commodities**
  - Active

- Indexed
- Long-Only and Long/Short
- (iv) **Hedge Funds and Portfolio Overlay**
- Macro
- Long/Short
- Event-Driven
- Market Neutral
- (v) **Real Estate**

**(B) Types of Alternative Investments-definitions**

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

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

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

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

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

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

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

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

(iv) 'Hedge Funds' means partnerships that use investment and risk

management skills to seek positive returns regardless of market direction.

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

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

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

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

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

**SECTION 13.** Title 3 Virgin Islands Code, chapter 27, section 717a is amended by deleting "made pursuant to section 717(10), (11) or (12) of this chapter" and by inserting, in the first sentence, after the phrase "any person who has a", the phrase, "personal, mortgage, or mortgage chattel".

**SECTION 14.** Title 3 Virgin Islands Code, chapter 27, section 718 is amended in the following instances:

1. Subsection (a) is amended by adding a new sentence following the word "system" to read:

"From time to time, the Board may actuarially determine the rate of contribution for members and employers of the system. After October 1, 2005, the system may not provide any increases in benefits to members or beneficiaries, unless the administration has identified a specific funding source and concurrently makes a provision for the funding of all future benefit improvements on sound actuarial basis in the annual budget."

2. Subsection (b) is amended by adding the following sentence at the beginning of the subsection:

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

3. Subsection (h), is amended by striking the language in its entirety and inserting new language to read:

"The employer and employee contributions must be paid to the system within ten days after the closing of each payroll period. Any payment not made within the ten days, must also include interest covering the time period that the payment remains unpaid at the equities investment earnings rate including capital gains in effect at the time the payment is made."

4. Section 718 is amended by adding a subsection (k) to read:

"(k) The employer shall pay to the system the total cost of any special, early retirement program in advance of the commencement of the early retirement program. If the employer is in default of payment for any prior special, early retirement program, the system may not distribute any special early retirement benefits from any additional special, early retirement program until full payment for the previous special early retirement program is made."

**SECTION 15.** Title 3 Virgin Islands Code, chapter 27, section 718b is amended in the first sentence by striking the word "chapter" where it appears at the end of the sentence and by inserting in its stead the word "subchapter".

**SECTION 16.** Title 3 Virgin Islands Code, chapter 27, section 724 is amended by striking the existing language and by inserting in lieu thereof new language to read:

"(a) Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record of this system, in an attempt to defraud the system, is guilty of a felony, and on conviction shall be fined not less than \$25,000 nor more \$100,000 and imprisoned not less than five years, without suspension, modification, or revocation of the sentence prescribed herein, nor more than ten years.

(b) Whenever any act of or attempt to commit fraud is discovered, the Administrator or his designee, shall transmit all evidence of the crime to the Department of Justice, Office of the Attorney General for investigation and prosecution.

(c) Should the fraudulent manipulation of the records result in any member's or beneficiary's receiving from the system more or less than he would have been entitled to receive had the records been correct, the Board shall correct the error and, as far as practicable, shall adjust future payments in a manner that the actuarial equivalent of the annuity or benefit that the member or beneficiary was correctly entitled to receive, shall be paid."

**SECTION 17.** Title 3 Virgin Islands Code, chapter 27, section 725 is amended by designating the existing language as subsection (a) and by adding a subsection (b) to read as follows:

"(b) Notwithstanding subsection (a) of this section, the rights and benefits provided in this chapter are assignable only pursuant to actions for the support of a child,

spouse, or other dependent, as ordered by any court of competent jurisdiction.”

**SECTION 18.** Title 3 Virgin Island Code, chapter 27, section 729 (b) is repealed and a new subsection (b) is inserted in lieu thereof:

“(b) The Board may set cost-of-living increases for annuitants and pensioners and determine when the annuity should be paid on the basis of the most recent actuarial valuation, the Consumer Price Index, or other economic studies or evaluations that the Board may determine are relevant.”

**SECTION 19.** Title 3 Virgin Islands Code, chapter 27, section 730 is amended by striking the language in subsection (b) in its entirety and inserting new language to read as follows:

“The Board may set cost-of-living increases for annuitants and pensioners and determine when the annuity should be paid on the basis of the most recent actuarial valuation, and the Consumer Price Index.”

**SECTION 20.** Title 3 Virgin Islands Code, chapter 27, section 730, subsection (d) is stricken.

**SECTION 21.** Title 3 Virgin Islands Code, chapter 27, section 731(b) is amended as follows:

In the first sentence, strike the semi-colon (;) after the word "retirement" and insert a period (.) in its place, and strike all language thereafter, beginning with the word "Provided".

**SECTION 22.** Title 3 Virgin Islands Code, chapter 27, section 733 is amended by inserting the following paragraph at the end of the subsection (f) to read:

"From time to time the Board may determine the rate of interest being earned on the contributions of members of the Judiciary, and may credit all contributions of members with interest at the net earnings rate, compounded annually or in accordance with the provisions of section 702(k) of this chapter."

**SECTION 23.** Title 3 Virgin Islands Code, chapter 27, is amended by adding a section 734 to read:

“§734. Continuing Obligation of the Government.

All payments required by this chapter to be made by the employer to the retirement fund are continuing obligations of the Government.”

**SECTION 24.** Title 3 Virgin Islands Code, chapter 27, is amended by adding a section 736 to read:

“§736. Failure or Refusal to Pay.



(a) Neither the government nor any agency, department, or instrumentality may fail or refuse to pay the employer's contribution required by this chapter within the applicable time limitation.

(b) Whenever any agency, department, instrumentality, or employer fails to make timely contributions, interest shall accrue on the amount of the contributions not paid based on the system's average fixed income investment rate of return, for the delinquency period."

**SECTION 25.** Title 3 Virgin Islands Code, chapter 27 is amended by adding a section 737 to read:

"§ 737. Unclaimed Benefits; Redeposit of Proceeds; Reversion; Return to Credit of Claimant; Lump Sum Benefits

(a) Whenever a person entitled to a payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located or a Miscellaneous Disbursement Voucher is cancelled, the payment due to the member shall be disbursed in accordance with the provisions of this section.

(b) Whenever the amount of a benefit payable by this system cannot be determined because the recipient cannot be identified, or information necessary to determination of the benefit to be paid cannot be ascertained, the accumulated contributions of the member, on whose account the benefit is payable, shall be disbursed in accordance with the provisions of this section.

(c) The amounts described in subsections (a) and (b) must be held, or if a Miscellaneous Disbursement Voucher has been drawn, the voucher must be deposited in the retirement fund and held for the claimant without further accumulation of interest. The redeposit does not operate to reinstate the membership of the person with respect to whose membership the refund or benefit was payable in this system. If the proceeds are not claimed within four years after the date of redeposit, they shall revert to, and become part of, the reserve established pursuant to section 719(3). Transfer to this reserve shall be made September 30 following the expiration of the four year period.

The Board may at any time, after transfer of the proceeds to the described reserve upon receipt of proper information satisfactory to it, return the proceeds so held in reserve to the credit of the claimant, to be administered in the manner provided for under this system.

(d) For lump-sum death benefits administered in accordance with subsection (c), where the system has caused notice of the benefits to be published in a newspaper of general circulation for at least three times a week for four consecutive weeks, and that person has not claimed the benefits, payment may be made to the next entitled beneficiary or beneficiaries, upon receipt of valid claims, if two years have passed since the date of death. Payment made by this system in good faith and in reliance on those claims, notwithstanding that it may fail to discover a person otherwise entitled to share in

the benefits, shall constitute a complete discharge and release of this system from further liability for the benefits.”

**SECTION 26.** Title 3 Virgin Islands Code, chapter 27, is amended by adding section 738 to read:

“§738. Claims; Time Period; Identification and Location of Beneficiaries.

The Board may fix the time as it considers reasonable during which claims for benefits under section 737 may be made. Anyone who is provided a claim form must be given the same amount of time in which to file it as any other claimant. The Board’s duty to identify or locate any member of any class of beneficiaries must be at a minimum consistent with section 737(d).”

**SECTION 27.** Title 3 Virgin Islands Code, chapter 27, is amended by adding a section 739 to read:

“§739. Order of Payment; Absence of Beneficiary Designation.

(a) If a person had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors in the following order:

(1) The decedent's spouse.

(2) The decedent's natural or adopted children, including a natural child adopted by another who meets the following criteria:

(A) The natural parent and adopted child lived together at any time as parent and child or the natural parent was married to or was cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child; and

(B) The child was adopted by the spouse of either of the natural parents or after the death of either of the natural parents or the child is a natural adopted by another as that phrase is defined or construed in title 15 Virgin Islands Code, chapter 3, relating to Descent and Distribution of Decedent’s Estate.

(3) The decedent's parents.

(4) The decedent's brothers and sisters.

(b) If a deceased person had no effective beneficiary designation and there are no survivors in the groups specified in subsection (a) who are entitled to the benefit under this section, the benefit shall be paid to the estate of the decedent, if the estate is either probated or subject to probate. Any benefit payable by the system may be paid either to the estate or to the duly authorized representative or representatives of the estate upon receipt by this system of a court order appointing an executor, administrator, or personal

representative.”

**SECTION 28.** Title 3 Virgin Islands Code, Chapter 27, is amended by adding a section 740 to read:

“§740. Statute of Limitations

(a) Notwithstanding title 5 Virgin Islands Code, chapter 3, any payment due the retirement system for services, repayment of loans or mortgages, or for the repayment of any amounts due to error or overpayment are not extinguished by the statute of limitations and shall accrue a maximum interest of thirty-three and one third percent per annum.”

**SECTION 29.** Title 3 Virgin Islands Code, chapter 27 is amended by inserting a new sub-chapter II to read:

**“Subchapter II. TIER II RETIREMENT BENEFITS PROGRAM**

§801. (a) A second tier retirement benefits program is established for officials and employees of the Government of the Virgin Islands and for their dependents and beneficiaries, for the payment of retirement annuities, disability annuities, and other benefits as provided herein to the officials and employees, and to their dependents and beneficiaries.

(b) The second tier program is established to establish retirement benefits for the same purpose as stated in section 701(b) for employees who become members of the system on or after October 1, 2005.

(c) The second tier program established under this sub-chapter shall be subject to the control of the GERS Board of Trustees, and shall be known and designated as the Tier II Retirement Benefits Program.

(d) The Tier II Retirement Benefits Program is effective thirty days after the enactment of this subchapter at which time employees and employers contributions shall begin. The date shall be known as the "date of establishment". Retirement, disability, death benefit, and all other payments by the system shall begin to accrue from the date of establishment.

(e) All provisions of subchapter I are applicable to this subchapter, except to the extent provided otherwise in this subchapter.”

**§802. Definitions**

(a) In this subchapter:

(1) "Tier II Retirement Benefits Program" mean the second tier system, as established in section 801 of this subchapter, to be administered by the Employees Retirement System of the Government of the Virgin Islands.

(2) "Member" means any employee included in the membership of the system and participating in the Tier II program.

(3) "Prior Service" means service as an employee of the employer after the date of enactment of this program until the last day of service prior to the member's date of retirement.

(4) "Regular Interest" means interest accrued on a member's contributions, after the date of enactment of this program, compounded annually, at the rate as shall be determined by the Board, from the experience of the system.

(5) "Average Compensation" means the average rates of annual compensation for the most recent five years of credited service within the last ten years of service, subject to the maximum salary limitations in effect during the service.

(6) "Police officer" means employees who perform traditional police duties or direct others in the performance of these duties, and excludes all other employees the as cadets, clerical, and housekeeping employees.

(7) "Prison Guard" or "Corrections Officer" means an employee in the Bureau of Corrections and the Department of Human Services who performs traditional correctional officer and supervisory correctional officer duties. This definition does not include any others in the Bureau or Department, such as clerical, housekeeping and food service employees or other supervisory or managerial personnel.

(8) "Firefighter" means an employee who performs traditional firefighting or fire prevention duties or direct others in the performance of these duties and excludes all other employees the as such as cadets, clerical, and housekeeping employees.

(9) "Salary Right" means compensation earned to include benefits or dues as a result of contract negotiations for the time of employment prior to separation from service, and shall also mean an increase or raise in compensation granted to any exempt employee or employee working in the unclassified service that has not yet been paid to the employee.

(b) Subsections (x) and (y) of section 702 of subchapter I have no applicability in this subchapter.

### **§803. Membership**

The following persons shall be included as members:

(a) Any person who enters the service of the Government of the Virgin Islands on and after October 1, 2005.

(b) Any person who becomes an employee on or after the date of establishment shall become a member as a condition of employment on the date of

appointment. Contributions by the person shall begin upon completion of one month of service, provided that the employee shall be eligible for duty disability and death benefits from the first day of service subject to the qualifying conditions prescribed for the payment of the benefits.

(c) Any person, who:

(1) was a member of the First Tier before October 1, 2005; but

(2) was not employed with the Government of the Virgin Islands on October 1, 2005; and

(3) reenters the service of the Government more than five years after the date of separation from government service.

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

(e) Any person employed by the employer who is not elsewhere excluded by the Virgin Islands Code from membership and whose term of employment is for at least one (1) year, provided that an initial appointment to a position for the remainder of the then current fiscal year be considered as meeting this requirement.

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

(1) Any employee whose services are compensated on a contractual or fee basis.

(2) Any casual or per-diem employee.

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

(4) Any provisional employee.

#### **§804. Credited Service**

(a) Any employee who has left the service of the government after the date of establishment, and re-enters service thereafter, shall be entitled to receive credit for prior service rendered prior to predecessor systems. Additionally, the member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, and the income the system would have earned had those contributions remained in the system and the interest on the unpaid balance if the member elects to redeposit on an installment basis.

(b) Any employee shall be entitled to credited service, up to a maximum of three years, for all military service in the Armed Forces of the United States, including the army, navy, marines or coast guard, merchant marines, air force, or any auxiliary thereof, either by enlistment or induction, provided he has accrued at least ten years of

regular credited service within the Government of the Virgin Islands. The member shall pay contributions in the manner prescribed in subsection (a) of this section.

(c) Prior service credit and membership service credit shall also include the time a member has served in military service, not to exceed three years, provided that the member has already accrued at least ten years of regular credited service within the Government of the Virgin Islands. The member shall pay contributions in the manner prescribed in subsection (a) of this section.

(d) Any member may be entitled to credit as prior service or membership service, as the case may be, for any period of approved leave of absence without compensation, under rules in force, which may not exceed an aggregate period of twenty-four months during the entire period of credited service of the member. The member shall pay to the system, the contributions and the income the system would have earned had those contributions been paid to the system during the period of his approved leave of absence without compensation, and the interest on the unpaid balance if the member elects to deposit on an installment basis, which shall not exceed a period of four years.

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

(f) Any employee shall be entitled to credited service as a member of the Legislature, provided the service is not applied to a legislative service retirement annuity, as provided in chapter 27, subchapter I of this title.

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

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

applicable interest.

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

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

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

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

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

(n) Retirement contributions paid for a prior period, whether by employer or by member, must be charged a delinquent fee of 1.5% for each calendar month or part thereof that paid contributions should have been paid. This includes prior period contributions due to incorrect wages and contributions from an earlier report or wages and contributions that should have been reported, but were not. This delinquent assessment may not be waived. If the delinquent assessment is not remitted within thirty days following the Benefits Division invoice, an additional delinquent assessment of 1.0% on the invoice amount shall be assessed for each calendar month or part thereof that the invoice is delinquent.

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

(p) If an employer fails to pay the total amount due within one hundred and

twenty calendar days from the date of the system's invoice, the Administrator shall notify the Board and certify the amounts due to the system. The Board shall determine the appropriate action to be taken.

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

#### **§805. Conditions for Service Retirement**

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

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

(c) Every member shall be retired automatically on a service retirement annuity upon reaching the age of seventy years, and after attaining a minimum of ten years of credited service, except that in the case of a police officer, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officer, the automatic retirement shall occur at the age of fifty-five years or over after attaining a minimum of ten years of credited service; notwithstanding that withdrawal from service may have occurred prior to the time that application for annuity is made. The mandatory retirement age, as established in this subsection, may be temporarily extended as provided in section 530 (g) of this title.

(d) Notwithstanding his age, any member who has completed thirty years of credited service may retire on a full service retirement annuity. Any member who is age fifty years with at least ten but less than thirty years of service may retire on a service annuity which shall be reduced by .325 of 1% for each month, or fraction thereof, that the member's age is less than sixty years.

(e) Notwithstanding his age, a police officer, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officer, who has completed twenty years or more of credited service in the respective position may retire on a full retirement annuity.

(f) Any member whose withdrawal from service occurs:

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



(2) in the case of a police officer, firefighter, including a firefighters employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officers, prior to age fifty-five years and after at least ten years of credited service, but not as much as twenty years of credited service, and who has not received a refund of accumulated contributions, is entitled to receive a deferred service annuity payable upon attainment of age sixty or fifty-five years, as the case may be.

#### **§806. Amount of Service Retirement Annuity**

(a) Upon retirement from service, a member shall receive a service retirement annuity, payable semi-monthly, computed at the rate of 1.75% of his average compensation times the number of years of credited service, the aggregate of which shall not exceed 100% of his average compensation.

(1) To the amounts of annual service retirement annuity produced by the application of the foregoing rates in any case in which average compensation is less than \$4,000 per year shall be added the sum of \$14.00 per year of credited service, and in any case in which average compensation is over \$4,500 but not more than \$6,000 per year, shall be added the sum of \$7.00 per year of credited service; however, the foregoing shall not apply to any person with forty or more years credited service.

(2) Notwithstanding any other provision of this chapter, the service retirement annuity of any member or special pensioner who has at least twenty years of credited service regardless of the retirement law in effect when the member retired shall be not less than \$1,680 per year.

(b) In the case of a police officer, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officer or combination thereof:

(1) The retirement annuity, for credited service of less than twenty years, shall be as provided in subsection (a) of this section.

(2) The retirement annuity for credited service of twenty years or more as a police officer, firefighter, including a fireman employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officer or a combination thereof, shall be the annuity produced by 2.10% of average compensation per year of credited service, but in no event may the retirement benefits payable to the person under the provisions of this chapter exceed 90% of average compensation, except as increased by paragraph (3) of this subsection; except, that any member qualifying for benefits under this paragraph may elect to receive the benefits or the benefits payable for his years of credited service under subsection (a) of this section.

(3) Beginning with the first day of the month coincident with or next following the date on which the retired police officer, firefighter, including a

firefighter employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officer has attained the age of sixty years and who has qualified for annuity payments under paragraph (2) of this subsection, the retirement benefits granted under this section shall be increased by 1.5% per annum and shall be increased by an additional 1.5% per annum each year thereafter.

(c) Any member receiving a service retirement annuity who reenters the service of the government either by appointment or on a contractual basis may not continue to receive his annuity while a current employee of the Government, and the service retirement annuity shall be cancelled and the member shall thereupon again become a contributor to the system. Upon subsequent retirement, the member shall receive a retirement annuity that shall consist of (a) the previous retirement annuity which had been cancelled, and (b) the additional credited service earned during re-employment.

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

#### **§806a. Limitation on compensation of retired contractual employees**

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

#### **§807. Options at Retirement**

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

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

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

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

Board; and any member electing an optional settlement provided herein must be counseled by the system, with respect to his options and status, before and after making his election.

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

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

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

(f) A member may designate one or more persons as beneficiaries. If more than one person is designated under an optional settlement involving life contingency of the beneficiary, the member is deemed to have elected the optional settlement on an equal portion of his allowance independently for each beneficiary. The options are:

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

(2) Optional Settlement 2 – The member has the right to have a retirement allowance paid him until his death and thereafter to his beneficiary for life.

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

#### **§808. Duty Disability Annuity**

(a) Any member who becomes totally and permanently incapacitated for service as the proximate result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, shall receive a duty disability annuity if the injuries or hazard were not the consequences of the willful negligence of the member.

(1) The application must be made not more than six months after the date the member has been advised that he is permanently and totally incapacitated for service, if an accidental disability, or six months after the occurrence of disablement if an occupational disease and proper proof is received from one or

more physicians designated by the Board that the member is mentally or physically incapacitated;

(2) In the case of members found to be permanently disabled and unfit to perform their duties in accordance with title 3 Virgin Islands Code, section 584a, subsection (d), application must be made not more than three months after the determination is made in accordance with title 3 Virgin Islands Code, section 584a, subsection (d), and no prior notice of the accident to the office of the Board shall be required.

(3) For the purposes of this section, "totally incapacitated" means the inability to perform substantial gainful employment.

(b) The duty disability annuity is payable during disability and is equal to 52.50% of the member's rate of compensation at date of disability in an amount not to exceed \$65,000 per annum. The annuity must be offset by any amounts received by the member as worker's compensation from the employer.

(c) The Board of Trustees may request earning information from recipients of disabilities to verify claims. The recipient shall provide the earning information to the Board within 30 days of the Board's request. If the recipient fails to provide the requested information within the prescribed time, the duty disability annuity shall be discontinued until the time as the requested information is provided. When the requested information is provided, the duty disability annuity shall resume.

#### **§809. Duty-connected Death Annuity**

(a) When the proximate cause of death of a member is as a result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, if the injuries or hazard were not the consequence of the willful misconduct of the member, the surviving widow of the member shall be entitled to an annuity equal to 28% of the annual compensation of the member at the date of death of the member, the payment shall continue until the spouse dies or remarries. This annuity must be increased by 7% of the member's compensation on account of each unmarried minor child under age eighteen, subject to a maximum payment to a widow and children of 42% of compensation.

(1) If there is no widow or if the widow dies or remarries before any child of the deceased member attains the age of eighteen years or twenty-three years, if a full time college student, then each child under the age shall receive an annuity of 7% of the member's compensation, to continue until each child attains age eighteen, or twenty-three years, if a full-time college student, subject to a limitation of 35% of compensation to all minor children.

(2) If there is no widow or children under the age of eighteen, then payment of annuity must be made to the dependent father and dependent mother of the member, at the rate of 17.50% of compensation to each, for life, except, that if none of the aforementioned beneficiaries is living at the death of the member, no duty-connected death annuity shall be paid under the provisions

hereof.

(b) Adopted children under the age of eighteen or twenty-three, if a full-time college student, are eligible for benefits hereunder if the proceeding for adoptions shall have been initiated at least one year prior to the date of death of the member.

(c) Where any payment under any section of this chapter is due a minor, or a person mentally incompetent or under other legal disability, the payment may be made to the person who is constituted guardian or other fiduciary by the law of the Virgin Islands, or the place of residence of the claimant, or is otherwise legally vested with the care of the claimant or his estate.

#### **§810. Non-duty Disability Annuity**

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

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

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

(d) The amount of disability annuity is equal to 1.4% of average compensation for each year of credited service at a date of disability, subject to a minimum of 14% of average compensation and a maximum of 42% of average compensation in an amount not to exceed \$65,000 per annum.

(e) Any payment by the employer representing salary or part salary shall be applied to reduce the amount of the annuity payable to the member.

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

**§811. Administration of Disability Annuities**

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

(b) If any member receiving a duty disability annuity or a non-duty disability annuity resumes gainful employment, and his earnings together and disability annuity, exceed the rate of compensation of the member at the date of retirement, the Board shall reduce the amount of disability annuity to an amount that, when added to the compensation being earned by the member, may not exceed the rate of compensation of the member at the date he last became a disability beneficiary.

(c) If disability beneficiary refuses to submit to a medical examination as herein provided, payments must be discontinued until a medical examination is conducted. If the medical examination is not conducted within one year, the Board shall revoke all rights the member has to receive a disability annuity.

**§812. Death Benefit Provisions**

(a) Upon the death of a member while in service, if no duty-connected death annuity is payable, a payment of the accumulated contributions of the deceased member is payable to a beneficiary whom he has designated.

(b) Upon the death of a retired member, unless an optional benefit has been elected as provided in section 807 of this title, a lump-sum payment equal to the excess of the annual salary of the member at the date of retirement as defined in section 802(a) of this title, plus the member's total contributions, over the amounts received by the member in annuity payments up to the time of his death, must be paid to the member's designated beneficiary.

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

- (1) the surviving spouse;

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

(3) the member's parents; and

(4) where none of the persons listed in subsection (c)(1-3) survives the member, the member's estate is entitled to receive payment of the excess of the member's accumulated contributions over the amount of annuity payment received by the member up to the time of his death.

(d) When a member dies while in service and the deceased member was qualified for a service retirement annuity as provided by the system, the deceased member's surviving spouse is entitled to a payment of the deceased member's accumulated contributions. If there is no surviving spouse, the death benefit is payable as provided in subsections (a) or (b) of this section, whichever is applicable.

### **§813. Refunds**

(a) Upon withdrawal from service, any member who is not then eligible for a service retirement annuity is entitled to receive a refund of the accumulated contributions, plus regular interest as defined in section 802 of subchapter II, including contributions made by the member to any superceded retirement system.

(1) Any member withdrawing from service, who does not receive a refund and later returns to service, shall receive credit for the amount of credited service earned at the time of his withdrawal from service.

(2) Any member receiving a refund shall thereby waive and relinquish all accrued rights in the system including all accrued credited service. If no specific request to the contrary is made by a member within thirty days from the date of his separation from the service, the Board may, in its discretion, refund the accumulated contributions of any member who has less than three years of credited service; notwithstanding that the member may not have applied for a refund.

(b) Any member who has received a refund shall be considered a new member upon subsequent re-employment if the person qualifies for membership under the provisions hereof. Provided that the entire refunded amount is repaid to the employee's retirement account, a member's account shall be given service credit upon the repayment of the following:

(1) All of the refunded contributions made under the present system;

(2) Interest as determined by the Board of Trustees, based on information provided to the Board by the system's actuarial consultant; and

(3) Any additional amount as determined necessary by the Board of Trustees, based on information provided to the Board by the system's actuarial consultant.

(c) An employee who takes advantage of the provisions of this subsection must be permitted to make the contributions over a period of time, not to exceed a five consecutive years, beginning at the time that the employee's eligibility to make the repayment has been determined.

**§814. Reserved for future use**

**§815. Reserved for future use**

**§816. Reserved for future use**

**§817. Loans**

(a) Reserved for future use.

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

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

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

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



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

(5) Bonds or other evidences of indebtedness of any domestic public utility corporation, provided that these securities bear a rating of "BBB" or better by any tow nationally know security rating concerns. Not more than two percent of total investments shall consist of any one issue of these bonds.

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

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

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

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

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

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

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

(10) Personal loans to members of the system. Provided that a member shall not have more than two loans in a fiscal year, and subject to the rules and regulations that the Board may prescribe, any member of the system who has contributed to the system for at least two years has the privilege of borrowing from the retirement system. The amount that any member may borrow may not exceed 75% of the member's contribution credits in the system and shall not, in any event, exceed the sum of \$50,000. In case of separation from service for any reason, including death or disability of the member, the balance due on the loan and any accrued interest thereon, shall be deducted from any refund of contributions, annuity, death benefit or any other benefit due to the member or his beneficiary. This rate includes a charge for insurance on loans against death or total and permanent disability, which development shall effect a cancellation of any unpaid balance of a loan and any accrued interest thereon. The principal amount and interest thereon, must be repaid to the system in installments at least equal to 5% of the member's salary and at a rate that will effect repayment of the loan before the member attains the retirement age. The repayments must be deducted from the salary of the member when the member's contributions to the system are deducted.

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

(A) The percentage of reserves in excess of cash requirement, which shall be available for loans, will be determined by actuarial valuations.

(B) The total amount of loan outstanding to any member shall be determined by the Board of Trustees and shall not exceed \$250,000.

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

(D) For loans given for home construction, during the construction and until a mortgage is executed, a bond or Builder's Risk Insurance must be obtained naming the system as beneficiary. As member's salary become due and payable, it shall be deemed collateral security for the loan until the principal, together with any interest thereon, is paid in full.

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

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

(G) The principal of the loan and interest thereon shall be repaid to the system in installments at least equal to 10% of the member's annual salary, and at a rate that will effect a repayment of the loan prior to

the member's attaining the age of seventy years. Such repayments shall be deducted from the salary of the member at the same time and in the same manner as the member's contributions to the system are deducted.

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

(I) The Board shall establish a special fund or account to restore to the system any losses suffered by it as a result of defaults on any loans or of any other cause incidental to the administration or operation of the loan program under this section.

(J) The Board may, to the extent necessary to protect the interests of the system, bid for the purchase of any property on which it holds a second mortgage, provided that the bid does not exceed the combined value of the first and second mortgages on the property. Amounts necessary to meet successful bids must be paid from accounts or reserves established by the Board of Trustees or from the Retirement System Mortgage Loan Fund as cited at title 33 Virgin Islands Code, section 3026.

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

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

(M) If that a member fails to provide evidence of property insurance coverage of the system's collateral interest in the mortgaged property, the Board of Trustees, upon thirty days' written notice to the member, shall place the member's mortgage into the forced-placed protection program to protect the system's mortgage interest in the mortgaged property.

(N) The system shall recover the cost of the forced-placed insurance premium in the following manner: (i) the member may pay the cost of the premium in full within ten days of the notice of the Board's payment of the forced-placed insurance premium; or (ii) the cost of the

forced-placed premium shall be added to the unpaid mortgage principal at an amortized interest rate that is consistent with the mortgage interest rate applicable for that particular mortgage category on the date that the premium is added to the principal.

(12) Chattel mortgages to members or retirees of the system shall be given, subject to the rules and regulations as the Board may prescribe, and consistent with the following conditions:

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

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

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

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

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

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

(G) The Board shall promulgate concerning the granting of a chattel mortgage for the purchase of a new automobile. The regulations must include, but not be limited to, down payment requirements for the loans.

(H) If a member fails to provide evidence of comprehensive automobile insurance coverage to the system for the collateral interest in the chattel mortgage, the Board of Trustees, upon thirty days' notice to the member, shall place the member into the forced-placed automobile insurance protection program to protect the system chattel mortgage interest in the automobile.

(I) The system shall recover the cost of the forced-placed

automobile insurance premium in the following manner: (a) the member may pay the cost of the forced-placed automobile insurance premium in full within ten days of notice of payment by the Board of the forced-plan automobile insurance premium; or (b) the cost of the forced-placed automobile insurance premium shall be added to the unpaid chattel mortgage principal at an amortized interest rate that is consistent with the chattel mortgage interest rate applicable to automobile loans on the date that the premium is added to the principal.

(13) Personal loans to members who have retired are entitled to annuities, if the loans do not exceed \$10,000 and that the recipient has no other outstanding personal loan from the system. The Board shall prescribe rules and regulations for the issuance of the loans which insure a reasonable repayment schedule, at least three collateral options, and a rate of interest not less favorable to the recipient than the rate charged for personal loans to members who are not retired.

(14) Subject to such rules and regulations as the Board may prescribe; provided that the rules and regulations do not prevent the member from obtaining a loan for the construction of a house pursuant to the provisions of paragraph (11), loans to members of the system solely for the purchase of land must be consistent with the following:

(A) Loans given for the purchase of land may be secured by a first priority mortgage. For the purpose of a securing a construction loan, the Board may consent to subordinate its interest in the first priority mortgage to a private lending institution.

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

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

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

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

#### **§818. Financing.**

(a) The various obligations of the system may be financed in accordance with actuarial reserve requirements from contributions by members, contributions by the employer, interest income, and other income accruing to the system. From time to time, the Board may actuarially determine the rate of contribution for members and employers of the system.

(b) Each employee who is a member of the Government Employee's Retirement System shall contribute a percentage of compensation as follows:

(1) Regular members must pay a rate to be determined by the Board of Trustees of his compensation with a minimum rate being 8.5% of his compensation.

(2) Any police officer, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshal of the Superior Court, or corrections officer must contribute a rate determined by the Board of Trustees.

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

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

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

(f) The employer shall make contributions that, together with the member's contributions and the income of the system, will be sufficient to provide adequate actuarially-determined reserves for the annuities and benefits herein prescribed.

(g) The employer shall contribute the amount of its employee's compensation as shall be determined by the Board of Trustee beginning with the first pay period thirty days after the enactment of this subchapter.

(h) The employer and employee contributions must be paid into the system within twenty-one days of each payroll period.

(i) The amounts contributed by the employer on behalf of an employee may not be considered as the employee's contributions for any purpose.

(j) The employer shall, in addition to any other contributions and payments to the system required by law, contribute to the system the sums as may be required to compensate the system for the costs of any special early retirement program. The system may refuse to pay any special early retirement entitlement claims if the employer fails to pay the contribution to the special early retirement program.

(k) The system may not pay benefits to an employee unless his and the employer's contributions adequately financed benefits and related costs provided under this sub-chapter.

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

(16) Bonds or other indebtedness issued by foreign governments or foreign corporations provided that (a) these securities bear a "BBB" or better by any two internationally known securities rating concerns, and (b) not more than 2 percent of total investments shall consist of any one issue of this bonds. The aggregate amount to have invested in foreign bonds shall be limited to 10 percent of the market value of the total investments of the system on the date the investment is made.

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

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

(19) **Alternative Investments**

The Board of Trustees may administer the investment portfolio programs of the system including the Alternative Investment Programs.

**(A) General; definitions**

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

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



- (i) **Private Equity**
  - Venture Capital
  - Mezzanine
  - Acquisition/Buyouts
  - Restructuring
  - Subordinated Debt
  - Special Situations
- (ii) **Natural Resources**
  - Oil and Gas
  - Agriculture
- (iii) **Managed Futures/Commodities**
  - Active
  - Indexed
  - Long-Only and Long/Short
- (iv) **Hedge Funds and Portfolio Overlay**
  - Macro
  - Long/Short
  - Event-Driven
  - Market Neutral
- (v) **Real Estate**

**(B) Types of Alternative Investments-definitions**

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

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

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

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

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

(vi) “Restructuring/Recovery” means investments made in distressed or poorly

performing companies, with the intent of initiating a recovery via financial restructuring or the introduction of management expertise. Partnership investments may include debt or equity securities.

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

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

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

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

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

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

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

(xiv) "Real Estate" means real estate wherever situated and shall include investments in real estate trust."

#### **§818a. Retroactive contributions by certain persons eligible for early retirement**

Any person eligible who elects to participate in the early retirement program shall contribute any additional amounts to the retirement system as required by rules and regulations adopted by the Board with respect to retroactive payments. The Board shall adopt rules and regulations regarding a schedule of additional contributions to be paid by such persons. The schedule may be established so as to take into consideration the reduced amounts of contributions actually made by the employee to the retirement system.

#### **§818b. Election Available to Eligible Employees**

Notwithstanding the provisions of this chapter, participation in any early

retirement program shall be voluntary for eligible employees as defined in this subchapter. Any person eligible for early retirement may elect to participate in the regular retirement program with contributions established at 8.5% of compensation. If the person eligible for early retirement becomes a participant in the early retirement program, the person shall pay the difference in contributions retroactive to the original date of their commencement of employment.

#### **§818c. Transfers of Eligible Employees**

(a) A member who is participating in the early retirement program and subsequently transfers to a position that generally would not qualify him to participate in the early retirement program, he may, if he already has accrued ten years of credited service in the eligible position, continue to contribute at the rates charged to members working in eligible positions, and continued payment of the rates shall qualify him to receive any benefit provided in the early retirement program.

(b) A member in a position that does not qualify him as a person eligible for early retirement who is transferred to a position so eligible may elect to contribute at the additional rate of compensation for which he shall receive full benefits after twenty years of credited service, if that the employee has been eligible and paying at the higher rate for a least ten years. The employee shall be required at the time he becomes eligible for early retirement or at the time he elects to participate, pursuant to section 818(b) of this sub-chapter, to pay retroactive contributions for credited service to the time he makes the election to pay for the difference between the rates for the time he seeks credit.

#### **§818d. Persons Eligible for early retirement; Definition**

For the purposes of sections 818a through 818d of this sub-chapter, "persons eligible for early retirement" means a police officer, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshals of the Superior Court, and correction officers.

**§819. Reserved for future use.**

**§820. Reserved for future use.**

**§821. Reserved for future use.**

**§822. Reserved for future use.**

#### **§823. Annuity and Benefit Payments**

(a) The right of any member or other beneficiary to an annuity, benefit or refund accrues as of the date of enactment of this subchapter.

(b) Except as otherwise provided, any annuity provided herein is payable for life in equal semi-monthly installments on the fifteenth and last day of each month from the beginning date fixed by the Administrator.

(c) An administrative fee may be charged for that portion of the month when

the annuity or benefit payment begins after the first day of the month or ends before the last day of the month.

(d) No annuity or benefit may be increased, decreased, revoked or repealed, except for error, or where specifically otherwise provided by this chapter.

**§824. Reserved for future use.**

**§825. Exemption of Rights from Legal Process; Un-assignability**

(a) Except as specifically provided otherwise in this chapter and subject to subsection (b), the rights of a person to any annuity or benefit or right accrued or accruing to any person under the provision of this chapter and the various monies in the system created by this chapter, are hereby exempted from levy and sale, garnishment, attachment, or any other legal process whatsoever, and are un-assignable.

(b) Notwithstanding subsection (a) of this section, the rights and benefits provided in this chapter are assignable only pursuant to actions for the support of a child, spouse, or other dependent, as ordered by any court of competent jurisdiction.

**§826. Reserved for future use.**

**§827. Reserved for future use.**

**§828. Reserved for future use.**

**§829. Reserved for future use.**

**§830. Reserved for future use.**

**§831. Accumulated Sick Leave**

(a) Any member having accumulated unused sick leave at date of retirement is entitled to service credit towards the service retirement annuity to which the member may be entitled. The credit for accumulated unused sick leave is one month for any period of fourteen to twenty-six days inclusive of the leave and one-half month for any period of five to thirteen days inclusive; except that, the credit for accumulated and unused sick leave is one year for any period consisting of 2,080 hours. Less than five days of unused sick leave may not be considered for the credit.

(b) Any member seeking to convert his accumulated sick leave to credited service, pursuant to subsection (a) of this section, shall pay to the system the combined rate of contribution for the employer and employee in effect at the time he seeks to have the accumulated sick leave converted to credited service. The member also shall pay to the system interest, as determined by the Board of Trustees, based on information submitted by the system's actuarial consultant.

**§832. Reserved for future use.**

**§833. Coverage for members of the Judiciary**

(a) Membership in the system for members of the Judiciary is optional, and must be made available to members of the Judiciary who were in service on the date of enactment of this subchapter. Salary deductions for new members of the system, at a rate which shall be determined by the Board of Trustees, shall begin from the first payroll period following the filing of the application with the Administrator and credited service as a member of the system shall begin to accrue. Any new member who desires credit for service rendered as a member of the Judiciary shall contribute to the system a rate of his annual compensation as shall be determined by the Board of Trustees.

(b) Each person who becomes a member of the Judiciary after the date of enactment of this subchapter, who is not a participant by previous appointment, shall automatically become a member of the system and be subject to compensation deductions hereunder, unless within 90 days from the date he becomes a member of the Judiciary, he filed with the Administrator a written notice of election not to participate.

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

(d) Notwithstanding the provisions of this chapter, proportionate contributions must be made by each member of the Judiciary who has completed six years of service, if the member elects to receive pension credit for any period for which the member was not covered by the system. However, the proportionate contributions must be made retroactively for the respective period of service, with the contributions being an amount that shall be determined by the Board of Trustees.

(e) The rate of contribution to the system on the part of a member of the Judiciary who becomes a member of the system shall be determined by the Board of Trustees. This rate applies to service rendered beginning from the first date the member takes the oath of office as a member of the Superior Court of the Virgin Islands. For purposes of this chapter, service as a member of the Judiciary during any part of a calendar year is deemed to be a year of credited service; provided, that contributions are made for full calendar year.

(f) Notwithstanding any other law, the conditions governing eligibility for service retirement for any member of the Judiciary and the amount of the annuity are as stated in this section as follows:

(1) Vesting in a service retirement annuity attaches upon completion of one term. Any member is eligible for service retirement beginning at age 50 on a judicial annuity equal to rates to be determined by the Board of Trustees.

(2) A member of the Judiciary must receive credit at the rate of 5% for any fractional portion of any term that has not been completed. As it applies to this subsection, "fraction portion" means no less than one calendar year during any particular term.

(3) For the purposes of this subsection, the term "compensation" means the highest rate of compensation, received by that member of the Judiciary

during his tenure and shall increase only as provided under this chapter.

(g) In the case of any member of the Judiciary who becomes separated from service before he completed an aggregate of one term as a member of the Judiciary, the total amount paid by the member, shall upon his application, be returned to him or the judicial service shall be credited to the member's service as provided in the provisions of this chapter. No member of the Judiciary may thereafter receive credit for the service unless he again becomes a member of the Judiciary and pays back into the system the amount so returned. The member shall pay to the system the income the system would have earned had those contributions been paid to the system during the member's separation from service, to include any applicable interest.

(h) Nothing contained in this chapter may be construed to prevent any person eligible therefor from simultaneously receiving an annuity computed on the basis of years of service other than as a member of the Judiciary and an annuity computed in accordance with the section; nor may anything contained in this chapter be construed to prevent a member of the Judiciary from receiving, while serving in the Judiciary, an annuity for non-judicial service.

(i) As used in this section, the term Judiciary means the Judges of the Superior Court of the Virgin Islands.

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

(k) The provisions of this section, with respect to conditions governing membership in the system, rates of contribution, conditions for retirement and rates of annuity, as prescribed by this chapter, apply to all membership of the Judiciary in service on October 1, 2004, and to those who become members of the Judiciary thereafter. All other sections of this chapter, to the extent that they confer additional rights or benefits in the system to participants therein, apply with equal force to members of the Judiciary who are members of the system.

**SECTION 30.** Title 3 Virgin Islands Code, chapter 29, subchapter II, sections 801-805 are re-designated as sections 791-795.

**SECTION 31.** Title 3 Virgin Islands Code, chapter 27, section 717 is amended in the following instances:

1. Subsection (b) after the word "securities" insert "and investments";
2. Subsection (b), subparagraph (9) is renumbered as subparagraph (10) with the remaining subparagraphs renumbered accordingly, and a new subparagraph (9) inserted in lieu thereof to read:

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

- (i) When the investment is in a group of life insurance policies, that the minimum number of measured lives is 100;
- (ii) All policies purchased as investments must be issued by insurers licensed to do business in at least one of the United States or its territories;
- (iii) The face value of any single policy investment by the system shall not exceed the greater of \$5,000,000 or 2% of the aggregate face value of policy investments by the system;
- (iv) The aggregate face value of policy investments by the system on any individual life shall not exceed the greater of 10,000,000 or 1% of the aggregate face value of policies purchased as investments by the system; and
- (v) Policy investments may include policies on the life of members of the system.

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

3. The newly renumbered subparagraph (10) is amended as follows:

(a) In the first paragraph, after the first occurrence of the word "securities" insert "and investments" and after the second occurrence of the word "securities," insert "or investments";

(b) In the second paragraph, second sentence, after each occurrence of the word "securities," insert "and investments".

**SECTION 32.** Title 3 Virgin Islands Code, section 717, subsection (b) paragraph (12), subparagraph (a) is amended by inserting "new motorcycles" after the word "vans".

**SECTION 33.** Section 3 of this Act becomes effective ninety days after its enactment.

**SECTION 34.** Section 18 of this Act becomes effective thirty days after its enactment.

Thus passed by the Legislature of the Virgin Islands on September 26, 2005.

Witnessed our Hands and Seal of the Legislature of the Virgin Islands this  
Day of October, A.D., 2005.

19th



*Lorraine L. Berry*

Lorraine L. Berry  
President

*Liston A. Davis*

Liston A. Davis  
Legislative Secretary

The above bill is hereby approved.



Witness my hand and the Seal of the  
Government of the United States  
Virgin Islands at Charlotte Amalie,  
St. Thomas, this 2nd day of November,  
A.D., 2005.

*Charles W. Turnbull*

Charles W. Turnbull  
Governor