2001 SENATE BILL 377

January 11, 2002 – Introduced by Senator BRESKE, by request of Donald Kiey, Woodruff. Referred to Committee on Universities, Housing, and Government Operations.

1   AN ACT **relating to:** calculation and payment of certain duty disability benefits

2   under the Wisconsin retirement system.

Analysis by the Legislative Reference Bureau

Under current law, a participant in the Wisconsin retirement system who is a protective occupation participant is entitled to receive a duty disability benefit if he or she is injured while performing his or her duty or contracts a disease due to his or her occupation, and if the disability is likely to be permanent, but only if the disability causes the person to retire from his or her job, the person's pay or position is reduced, or he or she is assigned to light duty, or the person's promotional opportunities are adversely affected if any employer rules, ordinances, policies, or written agreements specifically prohibit promotion because of the disability.

Under current law, however, any duty disability benefit that is paid to a person must be reduced by any worker's compensation benefit payable to the person. In *Coutts v. Wisconsin Retirement Board.*, 209 Wis. 2d 655, 562 N.W.2d 917 (1997), the Wisconsin supreme court held that this reduction in benefits applied only to worker's compensation payments to the person after the commencement of the duty disability benefit payment, not to worker's compensation payments received by the person before the commencement of the duty disability payments. Before this decision, the department of employee trust funds (DETF) had interpreted the provision to require that a duty benefit that is paid to a person must be reduced by any worker's compensation benefit that was paid to the person before and after the commencement of the duty disability benefit.

After *Coutts*, DETF began an audit of the accounts of those persons whose duty disability benefits may have been improperly reduced by worker's compensation

payments to determine whether these persons were entitled to a refund of moneys. As of October 1, 2001, DETF had yet to complete the audit. This bill requires DETF to complete the audit and to pay any refunds due the persons no later than October 1, 2002. In addition, the bill prohibits DETF from recovering any improper overpayment of duty disability benefits from a person whose account is examined in the audit and for whom it is determined that the person received an improper overpayment of duty disability benefits until after DETF has completed the audit.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. **Nonstatutory provisions.**

2   (1) CALCULATION AND PAYMENT OF CERTAIN DUTY DISABILITY BENEFITS UNDER THE

3   WISCONSIN RETIREMENT SYSTEM. No later than October 1, 2002, the department of

4   employee trust funds shall complete the audit of the accounts of participants in the

5   Wisconsin retirement system who are receiving duty disability benefits under

6   section 40.65 of the statutes and who may be entitled to refunds of duty disability

7   benefits that were improperly reduced under section 40.65 (5) (b) 3. of the statutes

8   before the supreme court's decision in *Coutts v. Wisconsin Retirement Board.*, 209

9   Wis. 2d 655, 562 N.W.2d 917 (1997). The department of employee trust funds shall

10   also pay any refunds due these participants no later than October 1, 2002, and may

11   not recover any improper overpayment of duty disability benefits from any

12   participant whose account is examined in the audit and for whom it is determined

13   that the participant received an improper overpayment of duty disability benefits

14   until after the department has completed the audit.

15   **(END)**