

Committee Name:

**Joint Survey Committee – Retirement Systems
(JSC–RS)**

Appointments

97hr_JSC–RS_Appt_pt00

Clearinghouse Rules

97hr_JSC–RS_CRule_97–

Committee Hearings

97hr_JSC–RS_CH_pt00

Committee Reports

97hr_JSC–RS_CR_pt00

Executive Sessions

97hr_JSC–RS_ES_pt00

Hearing Records

97hr_ab0118

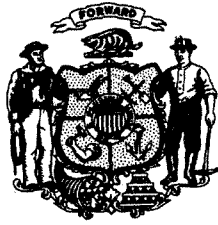
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Record of Committee Proceedings

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REBECCA YOUNG

STATE REPRESENTATIVE • SEVENTY-SIXTH ASSEMBLY DISTRICT

Assembly Bill 118 Testimony

Joint Survey Committee on Retirement Systems

October 15, 1997

Thank you for this operation to testify on Assembly Bill 118, a bill introduced by Senator Grobschmidt and myself, which relates to the execution of Qualified Domestic Relations Orders. These orders, also known as "QDROs", are court judgments or decrees that divide Wisconsin Retirement System benefits between a WRS participant and his or her former spouse

Although aspects of the current statutes and any legislation relating to QDROs can be complicated -- and that made the development of this bill a lengthy process -- AB 118 is actually fairly simple. It merely allows the Department of Employee Trust Funds to execute QDROs for divorces that took effect between January 1, 1982, and April 27, 1990. Currently the department is only able to execute QDROs for divorces effective on or after April 28, 1990. For divorces prior to that date, court orders dividing Wisconsin Retirement System benefits are unenforceable.

When the current QDRO law was enacted in 1990, it was decided that it would be prudent to just make the law prospective. However, over time we have found that there were court decrees in earlier divorce cases that were intended to divide WRS benefits, but that the Department of Employee Trust Funds has been unable to implement. This has created many problems for the people involved, for their lawyers, and for the Department of Employee Trust Funds. After reviewing the matter further, the department came to the same conclusion that was reached by me and by the Family Law Section of the State Bar Association – that the authority to implement QDROs should be extended to divorce decrees effective prior to April 28, 1990. AB 118 would move that date back to January 1, 1982, the date when the Wisconsin Retirement System was merged.

I began working on this issue several years ago, and have worked closely with the Department of Employee Trust Funds and the State Bar Association. After many meetings between these parties and the LRB drafter, we finally developed Assembly Bill 118. We have also agreed on an amendment to clarify that the bill would only authorize the implementation of a QDRO if the divorce decree already provided for the division of the Wisconsin Retirement System benefits.

I should mention at this point that AB 118 is identical to AB 196, a bill introduced by Representative Kreuser on behalf of a constituent of his who has been unable to execute a pre-1990 divorce decree. Unfortunately, Representative Kreuser has a prior commitment and is unable to be here this morning, but my comments in support of AB 118 apply as well to AB 196.

I know a number of legislative offices have been contacted in recent weeks by constituents who read the very brief synopsis of AB 118 and AB 196 in the listing of bills contained in the Trust Fund News. I know this because several such calls were referred to my office. The callers that my staff spoke with were fearful that one or both of these two bills might reopen their divorce case and allow for the division of retirement benefits that were not divided by an existing divorce decree. This certainly was not my intent, but because AB 118 was not completely clear on this point, I would like the committee to recommend an amendment that clarifies the effect of the bill.

The concern that the bill might reopen old divorce cases was first brought to my attention by Steve Werner, who represents the Wisconsin Professional Police Association. I worked with Mr. Werner to draft Assembly Amendment 1 to take care of his concern by stating that the bill does not authorize a court to revise or modify a divorce judgment or order relating to a final division of property. However, the Department of Employee Trust Funds noted that this amendment was drafted a little too tightly, because the execution of a QDRO might be construed as a modification of a divorce decree, even though the purpose of the QDRO was just to implement the existing decree's division of property. We went back to the drawing board and crafted a new amendment, LRBa726/1, which addresses Mr. Werner's concern, while also meeting the approval of the department and the State Bar Association. I would like the committee to introduce and recommend that amendment.

With this amendment, the bill shouldn't generate any controversy, since we are only authorizing the implementation of long-standing court orders. I urge you to recommend it as good public policy.

Thank you for your consideration.



STATE BAR
OF WISCONSIN

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MEMORANDUM

To: The Joint Survey Committee on Retirement Systems
From: Family Law Section
Date: October 15, 1997
Re: Support QDRO Legislation

The State Bar's Family Law Section has been working with State Representative Becky Young on her proposal (AB 118) to allow persons divorced between 1982 and 1990 to use qualified domestic relations orders (QDROs).

The Section supports legislation to expand the use of QDROs for the following reasons:

These orders to split pension interest between the divorcing parties into separate interests are more fair and less costly to the parties.

QDROs were allowed for anyone divorcing since 1989, as an experiment. The experiment has been a success and a very valuable and useful tool.

Now it is time to let everyone else with an interest in the plan prior to 1989 have access to QDROs.

The Family Law Section urges your support of legislation to expand the use of QDROs under the Wisconsin retirement system.

If you have any questions please feel free to contact Linda Barth at 250-6140.



STATE OF WISCONSIN

APPENDIX TO 1997 ASSEMBLY BILL 118

REPORT OF JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

(Introduced by Representatives R. Young, Baldwin, Boyle, Gronemus, LaFave, Notestein, Robson and Turner; cosponsored by Senators Grobschmidt, Buettner and Adelman.) An Act to amend 40.08 (1m)(f) 1., 40.08 (1m)(f) 2. and 40.08 (1m)(j) and to create 40.08 (1m)(f) 3. of the statutes; relating to qualified domestic relations orders under the Wisconsin retirement system.

EXTRACT OF COMMITTEE'S RECOMMENDATION ON THIS BILL**PURPOSE OF THE BILL**

Under current law a Wisconsin Retirement System (WRS) participant whose marriage ends on or after April 28, 1990, may have accrued benefits under the retirement system divided according to a qualified domestic relations order as governed by provisions of s. 40.08 (1m), Stats. This bill newly provides that a WRS participant whose marriage ends by a court order between January 1, 1982, and April 28, 1990, may also have accumulated WRS benefits divided according to a qualified domestic relations order received by the Department of Employee Trust Funds after the effective date of this bill, but only with respect to the payment of future benefits after that effective date.

The A.A. #1 to Assembly Bill 118 clarifies that this bill is not intended to authorize a court to receive or modify a judgment or order with respect to a final division of property.

- 2 -

ACTUARIAL EFFECT

This bill should have no effect upon the actuarial balance or goals of the WRS.

PROBABLE COST

Provisions of WRS law governing the division of benefits pursuant to a qualified domestic relations order specifically prohibit the payment of benefits that would exceed in value the benefits to which the participant is entitled. Accordingly, this bill would have no effect upon the employer and employee contribution rates to the WRS as determined by the retirement board and consulting actuary.

PUBLIC POLICY

Legislation was enacted during the 1989 session to provide a process for a division of accrued benefits under the WRS according to a qualified domestic relations order subject to the governing provisions enacted under the WRS law. This division process only applied to those participants whose marriage ended after April 28, 1990. The purpose of this bill is to extend the division process as provided by WRS statutes to those marriages which ended by a court order between January 21, 1982, and April 28, 1990, if the Department of Employee Trust Funds receives a qualified domestic relations order after the effective date of this legislation. The A.A. #1 to Assembly Bill 118 clarifies that this legislation is not intended to authorize a court to revise or modify an order with respect to a final division of property.

This legislation would extend the division process as it was enacted as good public policy during the 1989 session to those participants whose marriages ended after January 1, 1982, (the effective date of the merged WRS) and April 28, 1990, which was the effective date of the WRS law governing qualified domestic relations orders. This new legislation would have no effect upon the actuarial balance or contribution rates to the WRS as determined by the ETF Board.

RECOMMENDATION