

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Survey Committee
on Retirement Systems
(JSC-RS)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
-
- Executive Sessions ... ES
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
- 97hr_JSC-RS_Misc_pt07a
-
- Record of Comm. Proceedings ... RCP
-

Hearing 5-27
Sub-Comm.

Co-Chair:
Joint Survey Committee
on Retirement Systems

Co-Chair:
Retirement Research Committee



Committee Member:
Agriculture
Education
Highways
Tourism, Recreation and
Forest Productivity

John Volk

State Representative
January 14, 1988

TO: Interested Parties

FROM: Representative John Volk,
Co-Chairman of the Retirement Research Committee

✓ RE: Legislation Affecting the Protective Death and Disability
Program under 40.65, Stats.

The protective death and disability program governed by s. 40.65 of the statutes has been reviewed in depth by a special Ad Hoc Committee under the auspices of the RRC and also the Legislative Audit Bureau. I am introducing legislation which includes more of the changes recommended by the Ad Hoc Committee, and some of the suggestions reflected in the Audit Bureau report. This legislation will include the following points:

1. Define the Department of Employee Trust Funds (ETF) as a party of interest and direct the Attorney General's office to provide assistance as needed in the administration of s. 40.65.
2. Newly require two medical opinions relative to 40.65 applications, one of which shall be an ETF designated physician.
3. The application process shall be transferred to the ETF which will determine eligibility and payment of benefits except that the worker's compensation division would handle any dispute when the two medical opinions differ as to meeting eligibility standards.
4. Clarify that the ETF has the authority to experience rate the contribution requirements for employers covered by 40.65 and specify that the ETF has the authority to charge back administrative costs to the 40.65 program.
5. The qualification for 40.65 relative to "loss of promotional opportunities" shall only apply where state or local employer rules or ordinances would specifically prohibit promotion because of the qualifying disability.
6. Newly require each participant receiving benefits under 40.65 to submit an annual certified state or federal tax return.

7. Newly provide that future 40.65 applicants must qualify for W.C. benefits within two years of the date of application, or benefits shall terminate upon the conclusion of the two-year period.
8. Newly provide that participants with more than 25 years of creditable service on the date of application under 40.65 shall have the 80% guarantee level reduced by one-half percent for every month of service over 25 years. (This is in lieu of the age 55 reduction recommended by the Ad Hoc Committee.)
9. Continue the 80% guaranteed replacement rate for 40.65 annuitants who are totally disabled and qualify for regular WRS disability or S.S. disability benefits, but newly provide that the replacement guarantee shall be 65% of the earnings for those who are less than totally disabled.
10. Redefine "salary index" to mean the social security wage index as annually calculated by OASDHI.
11. Newly require the ETF to offset 40.65 payments for any employer-funded insurance payments.
12. Spousal benefits shall be increased from one-third to 50% of the participant's monthly salary, but subject to the same offsets of WRS, social security, and worker's compensation benefits that were related to the deceased participant's working record.
13. Benefits payable to children shall be increased to 10% of monthly salary per child, but to an aggregate limit of 70% of monthly salary including the spouse's benefit and subject to related payment offsets.
14. Survivor benefits (spouse and children) shall be subject to the same indexing process (annual salary increases) as now apply to the participant 80% income guarantee.
15. Children shall continue to be eligible for the child benefit under 40.65 to age 18 regardless of whether the spouse remarried.
16. Provide for an administrative appropriation and a position authority for one staff position under the ETF.



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS AND THE RETIREMENT RESEARCH COMMITTEE

BLAIR L. TESTIN
RESEARCH DIRECTOR

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December 1, 1993

TO: Members of the Retirement Research Committee
FROM: Blair Testin, RRC Staff
RE: **ISSUE - 40.65 DEATH AND DISABILITY BENEFITS**

At the last meeting of the RRC on September 15, 1993, the Committee established a small work group to review issues raised by Eau Claire and Portage Counties and also the DETF. The work group consisted of Rep. Mark Meyer, Co-Chair of the RRC; Blair Testin, RRC Staff; Tom Korpady and Rob Weber of the DETF.

The issues that were raised in the documents from the counties and DETF may be summarized as follows:

Eau Claire Resolution:

1. Allow employers to provide input in 40.65 determination.
2. Require disabled protectives to accept other county employment, if offered.
3. Strengthen 40.65 law to provide greater equity and fairness for employers and taxpayers.

Portage County:

4. Adopt Soc. Sec. definition of total and permanent disability.
5. Change "reduction in pay or position" to "reduction in total income", allowing employers to offer lesser paying jobs which would be supplemented by 40.65 payments.
6. Repeal "light duty" as qualifying position.
7. Eliminate references to "loss of promotional opportunity" as qualifying condition, reflecting ADA law.
8. Allow employers to also engage a physician for additional certification of disability.
9. Offset WRS separation benefits totally until their values are exhausted before 40.65 benefits become payable.
10. Furnish employers annually with offset information of their 40.65 annuitants.

DETF Staff:

11. Establish time limits for applications and appeals.
12. Clarify procedures governing administration, employer appeals, and medical records.
13. Increase coordination with worker's compensation law.
14. Establish specific bars to eligibility.
15. Provide for termination of benefits.
16. Clarify roles of certifying physicians and employers.

POSSIBLE REACTIONS TO ISSUES RAISED:

- I. **ISSUE: BENEFIT EQUITY.** The present duty disability benefits are essentially the same regardless of how severe the disability may be. Under the present s. 40.65 (5)(a), benefits are 80% of "monthly salary" if the participant also qualifies for either Social Security disability (OASDHI) or for a disability annuity under s. 40.63, and 75% for a person who does not. Nearly three-fourths of current duty disability recipients are entitled full duty disability benefits (i.e., 80% of monthly salary).

Ordinarily, OASDHI and § 40.63 disability benefits require "total and permanent" disability. However, a special provision in § 40.63 (4) sets a lower standard for protectives age 50 through 54 with at least 15 years of creditable service, who need only show they "can no longer efficiently and safely perform the duties required by the participant's position, and that the condition is likely to be permanent." Hence, two applicatns with wildly different degrees of disability will receive essentially the same benefit.

POSSIBLE REACTIONS:

- A. Establish a scale of maximum duty disability benefits based on the percentage of disability to the body as a whole as determined by the DETF based on the reports by the examining physicians, or by DILHR in eligibility cases decided by that agency. An example might be 0 to 50% disability equals 40% of monthly salary, 51%-75% equals 60% of salary, and 76%-100% equals 80% of salary.
- B. Amend § 40.65 (5)(a) to except qualification for benefits under § 40.63(4) as the basis for full duty disability benefits at 80% of monthly salary.
- II. **ISSUE: TERMINATION OF BENEFITS.** Duty disability benefits are essentially lifetime income, under present law, regardless of any change in circumstances including recovery from the disability. There have been taxpayer complaints about duty disability recipients who appear to be performing tasks inconsistent with their claimed disability.

POSSIBLE REACTIONS

- A. Allow DETF to order periodic medical re-examinations.
- B. Provide for termination of benefits upon recovery.

- C. Terminate duty disability benefits upon returning to work for a different employer as a "protective" or as a law enforcement officer or fire fighter or upon working in any other occupation listed in s. 40.02 (48) or which, if performed for a participating employer, would be "protective".

III. **ISSUE: DEFINITION OF QUALIFYING DISABILITY:** The present law inadequately describes the nature and degree of the disability for which duty disability benefits are intended.

POSSIBLE REACTIONS:

- A. Redefine the necessary disability in more objective terms which focus on an inability to perform protective occupation job duties for medically demonstrable reasons, rather than the employe's subjective opinion.
- B. Insert description of requisite disability to include Social Security style language.
 - 1. The benefits are intended for a protective occupation participant who is unable to perform the employer-required tasks of his or her employment classification due to onset of a serious and medically determinable impairment, whether physical or mental, which can reasonably be expected to result in death or to be permanent, or of indefinite and long-continued duration.
 - 2. A "medically determinable impairment" means a physical or mental impairment resulting from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.
- C. Repeal and recreate the eligibility criteria under § 40.65 (4) to emphasize required severity of the impairment and to eliminate the present "light duty" and "promotional opportunity" criteria.
- D. Set new standards.
 - 1. The impairment must be so severe that one or more of the following is permanently, not just temporarily, true:
 - a. The participant is terminated by the employer on the grounds that the participant is unable to perform the duties of the employment by reason of the impairment.

- b. The participant is medically required to terminate employment for the employer by reason of the impairment.
- c. The only available employment from the same employer that the participant is medically capable of performing is either:
 - (1) A job with reduced annual earnings, as defined by s. 40.02 (22).
 - (2) A job other than as a protective occupation participant under s. 40.02 (48m).
- d. The employer denied the employe a specific promotion for which the employe otherwise qualified, based only on the employe's impairment.

IV. **ISSUE: EMPLOYER OFFERS OF EMPLOYMENT:** The present law does nothing to encourage a person qualifying for duty disability benefits to continue to work for the same employer. Some employers are willing and able to offer employment which accommodates the employe's disability, and the new ADA Law requires employers to make reasonable accommdations for continued employment.

POSSIBLE REACTIONS:

- A. Create a new subdivision, § 40.65 (5)(b)5m, to offset "constructive earnings." Offset against duty disability benefits the "monthly salary" of a job, regardless of employment category (i.e., protective, general, etc.), offered to the participant by the same employer, which the participant is capable of performing, but which the participant declines.
 - 2. "Monthly salary" for this offset is to be initially computed and then indexed in the same manner as for computation of duty disability benefits.
 - 3. The terms of offers under this provision, including designating specific "accommodation" jobs, may be the subject of collective bargaining.
 - 4. This offset shall cease if offer of accommodating employment is withdrawn by the employer, if the participant has greater offsetting income under § 40.65 (5)(b) 6, or if the participant receives a disability or retirement annuity under any provision of this chapter except s. 40.63 (4), Stats.

- V. **WORKER'S COMPENSATION COORDINATION:** There is no requirement to apply for workers compensation benefits before applying for duty disability benefits, or vice versa. Since these matters are handled separately, it is at least possible for a person to obtain duty disability benefits although found ineligible for workers compensation benefits. Some employers and their third party insurers aggravate this problem by admitting a person qualifies for duty disability benefits but denying liability for workers compensation.

POSSIBLE REACTIONS

- A. Bar eligibility for duty disability if the applicant has previously been found ineligible for basic or permanent disability (PTD or PPD) award for the same injury or disease in a workers compensation proceeding.
- B. Terminate payment of duty disability benefits if, after approval, a workers compensation proceeding determines the person is not entitled to either permanent disability (total or partial) or basic workers compensation benefits.
1. Require repayment of duty disability benefits already paid.
- C. Compel employer to take self-consistent position with respect to existence of any permanent disability, occurrence of any injury, and whether injury or disease is work related, between workers compensation proceedings and duty disability application and appeal.
1. An admission by the employer that the participant qualifies for duty disability benefits shall also be an admission for workers compensation proceedings and binding upon the employer's insurers.
- VI. **ISSUE: DISCIPLINARY ACTIONS:** A number of applicants for duty disability benefits terminated employment due to disciplinary proceedings. Use of the duty disability program by employers to "dump" undesirable employes or to guarantee income to persons guilty of misconduct is an abuse of the program.

POSSIBLE REACTIONS:

- A. Bar eligibility for duty disability benefits if the qualifying termination of employment or change in pay or job duties was associated with disciplinary action.

VII. **ISSUE: TIME LIMITS:** There are, under present law, no time limits governing when an application for duty disability benefits must be made or when an appeal of the DEFF decision on the application must be taken. All other DETF determination are appealable for 90 days.

POSSIBLE REACTIONS:

- A. Since AN APPLICANT must know that a termination of employment, change in pay or duties or promotional denial is based solely on disability, set a time limit for applying based both on date of injury and termination of employment or protective status. The applicant must apply within both of the following two deadline periods:
1. No later than 90 days after the earliest of the following events:
 - a. Termination from employer where onset of impairment occurred.
 - b. Ceasing to be "protective occupation participant"
 - c. Ceasing to be "participating employe"
 2. Within 2 years from:
 - d. Date of injury, if the impairment results from an injury.
 - e. The date the participant or employe's surviving spouse knew or ought to have known of the nature of a disease-caused impairment and its relationship to the employment.
- B. Appeal of denial of duty disability application to DILHR must be received by DILHR, in writing, within 90 days after the date the Department of Employee Trust Funds notice is sent to the applicant's address as shown on the application form.
- C. Require injured participant to give notice to employer, under the same terms as apply to workers compensation claims under § 102.12, Stats.

VIII. **ISSUE: COST SHIFTING:** Cost shifting by employes and employers from workers compensation insurance liability to the duty disability program are inflating the costs of the duty disability program to all protective employers. The present law provides insufficient incentives and sanctions to encourage persons to obtain the workers compensation benefits. Yet, as pointed out in the 1987 audit, it is generally impossible to qualify for duty disability benefits without also being entitled to workers compensation.

In addition, a number of duty disability recipients are attempting to obtain both duty disability and workers compensation benefits for the same injury by collecting the workers compensation benefits before applying for duty disability, then arguing that the offset under the present law does not include previously received workers compensation. Other duty disability recipients compromise workers compensation claims because they have no incentive to pursue them, then argue that their workers compensation benefits have been determined and that their duty disability benefits should no longer be reduced by the 5% mandated under present law.

POSSIBLE REACTIONS:

- A. In § 40.65 (5)(b)(intro.) Increase from 5% to 15% the amount of duty disability benefits to be withheld until recipient obtains a worker's compensation award.
- B. Repeal and recreate § 40.65 (5)(b)3 to provide for the offset against duty disability benefits of all workers compensation awards not already treated as earnings by the WRS, except for awards paid for an injury or disease completely unrelated to the impairment which entitles the participant to duty disability benefits. The offset shall be made regardless of when the workers compensation benefits were paid, except as follows:
 1. 25% of the workers compensation benefits awarded to the participant may be retained by the employe, without offset against duty disability benefits.
 2. Workers compensation benefits expressly identified in the award as not being payable to the employe, such as attorney fees or medical expenses, may not be offset against duty disability benefits.
- C. Workers compensation benefits already paid to the participant when DETF computes the reduction in duty disability benefits shall be treated as if they were paid as a single lump sum. The lump sum offset shall be computed as under present s. 40.65 (5)(b)3.

- D. If the participant enters into a compromise which results in dismissal of the workers compensation claim, DETF shall continue to withhold 15% of duty disability benefits while the compromise is in effect, unless DETF was a party to the compromise, or approved its terms in writing. In that case, the compromise will then be treated as a workers compensation award, above.

- IX. **ISSUE: RESPONSIBILITY CLARIFICATIONS.** The present s. 40.65 (2)(b) inadequately summarizes the responsibilities of the employer, the physicians and the DETF concerning evaluation of an application for duty disability benefits.

POSSIBLE REACTIONS:

- A. Clarify law to indicate that the medical reports are for the purpose of obtaining professional medical opinions, to a reasonable degree of medical certainty, as to:
1. The existence of medically determinable impairment.
 2. The description of the specific nature of the impairment and the associated limitations.
 3. The percentage of total disability to the body as a whole.
 4. The expected duration of the impairment.
 5. The cause of the impairment.
 6. The particular injury or occupational disease that resulted in the impairment.
 7. Any other medical information requested by DETF in order to make its determination of eligibility.
- B. Medical reports filed with DETF in connection with an application for duty disability benefits must be recent, no more than 6 months old.
- C. Clarify law to indicate the information sought from the employer includes:
1. Any knowledge of reasons for termination of employment or changed pay or job duties, including disciplinary action, or other reasons besides impairment.
 2. Any medical reports or information known to the employer concerning the claimed disability.

3. A binding admission or denial that either:
 - a. The injury causing the impairment occurred in the performance of duty.
 - b. The disease causing the impairment results from the occupation.
 - D. Allow the employer to compel an independent medical examination (WI) of the participant in order to decide whether to certify that a disease is occupational.
 - E. Clearly permit the employer to veto the application. Preserve the effect of the present law by mandating that the application be denied if the employer so requests, or if the employer refuses to make the admissions necessary to qualify the participant to duty disability benefits.
 - F. Provide that DETF shall make a determination on the application based on its review of the information furnished by the applicant, employer and physicians. DETF's determination of whether the information is sufficient to show the applicant qualifies under § 40.65 should continue to be appealable to DILHR.
 - G. Clearly allow both the employer and participant to appeal a DETF eligibility determination to DILHR.
- X. **ISSUE: EMPLOYER RESPONSES:** Some employers abuse the application process by refusing to respond to DETF requests to act on the application, thereby delaying any resolution of the application.
- POSSIBLE REACTIONS:**
- A. Require the employer to respond to request for Employer certification by DETF within 90 days, or the failure to respond is a refusal to certify, resulting in a denial.
 - B. Allow applicant to recover reasonable costs from the employer if the participant prevails in an appeal of a denial based solely on the employer's refusal to respond.
- XI. **ISSUE: SURVIVOR BENEFITS.** Duty disability benefits under 40.65 provide only limited spousal benefits if the disability results in death. Some duty disability recipients take separation benefits from the WRS, ending any entitlement to retirement and death benefits. Retirement benefits are offset against duty disability benefits, reducing costs to employers of the duty disability program.

POSSIBLE REACTIONS:

A. Terminate all entitlement to duty disability benefits if the recipient ceases to be a participant for a reason other than death, thus discouraging separation benefits.

OR
B. Provide that WRS separation benefits shall be a total offset to 40.65 benefits until exhausted, in lieu of the existing "present value" offset.

XII. **ISSUE: BARS TO ELIGIBILITY:** To conform to the above suggestions, express bars to eligibility for duty disability benefits should be stated in a subsection to be created.

POSSIBLE REACTIONS:

E. In addition to the express bars already stated, the list of persons who are ineligible for duty disability benefits should include:

1. Person no longer a participant in the WRS at time of application.

2. Person not a protective occupation participant at time of application.

a. However, a WRS participant would be deemed a protective, only for purposes of this paragraph, who terminated protective status no more than 90 days prior to the application because:

(1) Terminated by the employer due to inability to perform the job due to the impairment.

(2) Medically required to terminate employment due to the impairment.

(3) Only job available and able to perform was non-protective. [See the 3 respective criteria for severity of disability under Issue C]

3. Time-barred. [See proposed time limits].

XIII. **ISSUE: WR BOARD RESPONSIBILITIES.** Presently § 40.65 (3), (5)(b)(intro.), and (6) provides that the Wisconsin Retirement Board is responsible for determining the amount of "monthly salary," amount of benefits, amount of reductions, any termination or suspension of benefits, etc. This board meets only quarterly. In actual practice, the DETF makes these determinations and provides for an appeal to the WR Board.

POSSIBLE REACTIONS:

- A. Amend current language to clearly state that the Department of Employee Trust Funds, not the Wisconsin Retirement Board, will initially make all determinations under § 40.65. Except for an appeal to DILHR concerning the eligibility for benefits, as expressly provided, a "timely appeal" of any other DETF determination may be made to the Wisconsin Retirement Board.

- XIV. **ISSUE: MEDICAL RECORD CONFIDENTIALITY:** Medical records are required to be held strictly confidential by DETF, under § 40.07(2). Even the participant has no access to these reports except by court order or after a disability appeal is begun. As a result, DETF may not now disclose physician reports concerning a duty disability application to the employer. This has resulted in unnecessary denials when employers who did not have any medical information refused to approve the application.

POSSIBLE REACTIONS:

- A. Revise s. 40.07 (2), Stats., to allow disclosure of medical records concerning the duty disability application to the employer, after an application for duty disability benefits is received by DETF, and to DILHR and the parties, after an appeal is filed.

- XV. **ISSUE: DEFINITION OF "MONTHLY SALARY":** With increasing frequency, duty disability recipients are challenging their employer's computation of the "monthly salary" from which DETF computes duty disability benefits. Under § 40.02 (41m), the "gross amount paid" excludes overtime not received on "a regular and dependable basis." The term has never been defined by statute or rule.

POSSIBLE REACTIONS:

- A. Redefine "monthly salary" as the amount of "earnings" as defined by § 40.02 (22) reportable to the Wisconsin Retirement System for the calendar year immediately preceding the effective date for duty disability benefits.

- XVI. **ISSUE: OLD LAW APPLICATION:** The present § 40.65 contains an outdated procedure for applications made prior to May 3, 1988. This has recently been misinterpreted by one DILHR administrative law judge to require a person who filed a denied and dismissed application before 1988 to follow the "old law" procedures even when filing another application today.

POSSIBLE REACTIONS:

- A. Repeal s. 40.65 (2)(a), since no application may now be filed prior to May 3, 1988.
- B. Amend s. 40.65 (2)(b)(intro.) to apply to all applications made on or after May 3, 1988, deleting "who first apply ...".

XVII. **ISSUE: PRESUMPTION CLAUSE:** Under present law, some fire fighters are presumed to have an occupational disease for purposes of determining eligibility for duty disability benefits. The presumption does not expressly apply to workers compensation benefits, resulting in cases of persons receiving duty disability benefits who are not eligible for workers compensation.

POSSIBLE REACTIONS:

- A. Make presumption of occupational disease uniform with respect to both s. 40.65 and ch. 102 (workers compensation) benefits by making \$ 891.45 (the so-called "fire fighter's heart and lung" presumption) a rebuttable presumption applicable to both 40.65 and workers compensation.



AFSCME®

WISCONSIN OFFICE

• 5 Odana Court

• Madison, Wisconsin 53719-1167

• Telephone 608/271-8850

DATE: December 12, 1994

TO: Blair Testin
Retirement Research Committee

FROM: Dennis Boyer *SB*

RE: Questions Concerning 40.65, Duty Disability

Roy Kubista has informed me that his informal conversation would best be followed up by a formal AFSCME request in this area.

By way of background, I can disclose that the unions continue to meet on this subject and have initiated contact with the larger employers as well. It appears that all groups are somewhat uncertain as to the trends and projections under 40.65.

The idea of an independent, union-sponsored study of 40.65 has been broached, but AFSCME is uncertain about the timing and efficiency of this approach.

Your 9/15/93 memo to RRC did outline a number of key elements in a clear and concise fashion. It is my view that an update of that memo would be useful. In addition, the various unions would find it helpful to review the current status, trends and projections of costs, number of claims and occupational breakdowns. Along with that, there is interest in the actual rates of individual employers and in a summary of administrative problems.

Your assistance is deeply appreciated. Please contact me if you have any questions about this request.

DB:sp

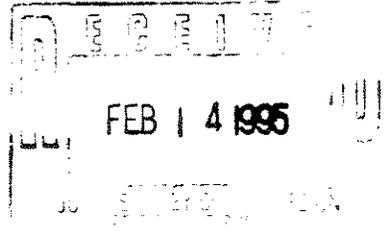
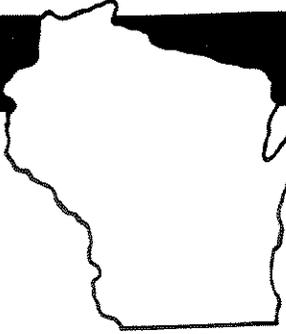
xc: Sandra Bloomfield
Bob Lyons
Mark Zeier, IAFF
Steve Woerner, WPPA
Ed Huck

Marty Beil
Roy Kubista
David Clarenbach, IAFF
Ken Opin. WFT

in the public service

WISCONSIN ALLIANCE OF CITIES

14 W. MIFFLIN • P.O. BOX 336 • MADISON, WI 53703-0336 • (608) 257-5881 • FAX 257-5882



February 8, 1995

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Wausau
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West Allis
Wisconsin Rapids

Tom Korpady
Dept. of Employee Trust Funds
GEF 1, Room 171
Madison, WI 53702

Dear Mr. Korpady:

We are writing to request information regarding the Section 40.65 Duty Disability fund for protective employees administered by the Department.

Specifically we would like information on the following:

- The reason for the differential between the employer's Duty Disability contribution rate and the claims experience level.
- If the purpose of the differential is to make up for losses incurred in the early years of the fund, when does the Department anticipate the fund will be whole? If past losses have been recaptured, why have employers not experienced a commensurate decrease in their contribution rate?
- The process for providing oversight in regard to offsets for an employees outside income, i.e. does the Department use income tax returns to crosscheck a recipients income.
- A list of the current duty disability recipients, their occupation and age at which they began to draw 40.65 benefits and their current age, and the municipality responsible for paying the benefit.

We want to thank you in advance for providing us with this information.

Sincerely,

Edward J. Huck
Executive Director
Alliance of Cities

Mark D. Zeier
President
Professional Firefighters of Wis.

Steven Werner
Legislative Representative
Wis. Professional Police Assoc.

Roy E. Kubista
Legislative Research Analyst
AFSCME



STATE OF WISCONSIN

Department of Employee Trust Funds

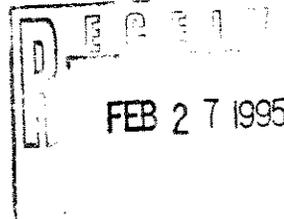
Eric Stanchfield
Secretary

201 East Washington Avenue
P. O. Box 7931
Madison, Wisconsin 53707

February 23, 1995

EDWARD J HUCK EXECUTIVE DIRECTOR
ALLIANCE OF CITIES
14 W MIFFLIN
PO BOX 336
MADISON WI 53703 0336

In Reply Refer To:



Dear Mr. Huck:

This in response to your correspondence co-signed by Mr. Zeier, Mr. Werner and Mr. Kubista.

I regret that I am unable to comply with your request for a listing of current 40.65 benefit recipients due to the prohibitions contained in ss. 40.07(1), (2) and (3), Wis. Stats. In lieu of that I have enclosed a copy of a report showing the number and benefits totals paid to 40.65 benefit recipients by employer. I hope this substitute report will be of some value.

I have also enclosed a copy of an excerpt from the 13th Annual Actuarial Valuation of the Wisconsin Retirement System. This Valuation is prepared by our consulting actuaries and is used by the Employee Trust Funds Board in setting the contribution rates for the various programs that the Board oversees. You will note in the report on page II-5, that 1993 was the first year that the plan's cash deficit was eliminated.

When the 40.65 duty disability benefit program was created, it was the Legislature's express intent to have the program pre-funded on (to as great an extent as possible) a level employer contribution basis.

Indeed, the volatility of the pay-as-you-go approach that most employers used to fund the 66.191 program was cited as a major problem that needed correction under the new 40.65 plan. To this end, initial contribution rates for 40.65 were set at 0.2% of payroll. This initial rate was recommended by the Board's actuary and was based primarily on the number of 66.191 benefits then being paid.

It soon became apparent that the dynamics of the new program were so fundamentally different than 66.191 that its claims experience was irrelevant and could not be used to develop actuarial assumptions for setting 40.65 contribution rates. As a consequence, the program incurred a substantial cash deficit by only the second year of its existence. The Board moved quickly to resolve the funding problem, but despite annual increases in the required contribution rate, the plan continued to generate deficits until 1990. From 1990 on, the contribution rate has generated greater income than the concurrent benefit payments, and as noted above, the close of 1993 saw the first positive balance since the plan's inception.

Mr. Edward J. Huck
February 23, 1995
Page 2

While we are now generating positive cash flow, we are nowhere near full pre-funding. In fact, you will note that the actuary has estimated a contribution of 1% of payroll will be needed to amortize over thirty years the shortfall that has accrued to date. The remaining 2.2% of payroll contribution rate is allocated to current claims cost, and will be sufficient only if claims experience stabilizes at the current rate.

We are hopeful that this stabilization has occurred and that the current rate structure will adequately fund past, current and future benefits. If the program is truly stabilized, then employers can expect to see the current situation eventually reversed, and the level contribution rate will, in most cases, be less than the employers' current annual claims payment.

Your third question relates to our process for discovery and application of offsettable income. Each year, every 40.65 benefit recipient is required to file with the Department an income certification detailing any source and amount of offsettable income. In addition, every 40.65 benefit recipient must, by statute, annually provide the Department with a certified copy of their state or federal income tax return. The recipients are warned that any false or withheld information could lead to termination of their 40.65 benefit, and we suspect that this consequence is a powerful deterrent to under-reporting. Finally, we will investigate any reports of unreported income, and we encourage employers and others who become aware of unreported income to alert us.

I hope this information has been helpful to you and I encourage you to contact me if you have further questions about this program and our administrative processes.

Sincerely,



Thomas C. Korpady, Director
Health and Disability Benefits
(608) 266-0207
FAX (608) 267-0633

TK:sl

cc: Mark D. Zeier
Steven Werner
Roy E. Kubista
Blair Testin

Enclosure

Empr #	1994 Rate	# of Claims	1995 Duty Disability Calculation	Claims	Salary	Claims Over 5.6%	Claims as % of Salary	1995 Rate	Est. Revenue 1995 Rate	Est. Revenue Unchanged Rate	Change in Rate
0001-105	1.9%	1.00	26,982.12	26,982.12	3,197,543.56		0.84%	2.1%	67,148.41	60,753.33	0.20%
0001-108	2.9%	2.00	38,120.71	38,120.71	1,619,578.18		2.35%	4.6%	74,500.60	46,967.77	1.70%
0001-111	1.9%	8.00	88,533.45	88,533.45	12,862,185.90		0.69%	2.1%	270,105.90	244,381.53	0.20%
0001-114	4.9%	21.00	412,308.39	412,308.39	13,378,017.36		3.08%	5.6%	748,168.97	588,632.76	1.70%
0001-117	2.9%	18.00	336,542.74	336,542.74	16,819,793.94		2.00%	4.6%	773,710.52	467,774.02	1.70%
0001-130	1.9%	3.00	1,788,618.42	1,788,618.42	1,788,618.42		1.49%	3.1%	55,447.17	33,983.75	0.20%
0001-131	5.4%	7.00	186,631.34	186,631.34	3,048,540.25	46,870.29	6.12%	5.6%	170,718.25	164,621.17	0.20%
0001-176	1.4%	18.00	280,722.67	280,722.67	61,977,882.81		0.45%	1.6%	991,646.12	867,690.36	0.20%
0003-000	1.9%	1.00	7,741.71	7,741.71	1,013,310.95		0.76%	2.1%	21,279.53	19,252.91	0.20%
0005-000	5.4%	4.00	324,940.22	324,940.22	324,940.22	8,001.76	23.09%	5.6%	18,176.47	17,527.31	0.20%
0009-000	1.9%	1.00	19,702.37	19,702.37	900,249.10		2.19%	2.1%	18,905.23	17,104.73	0.20%
0011-000	1.4%	1.00	4,726.92	4,726.92	774,539.58		0.61%	2.1%	16,285.33	10,843.55	0.70%
0012-000	1.9%	1.00	16,021.90	16,021.90	1,173,591.37		1.37%	2.1%	24,645.42	22,298.24	0.20%
0018-000	5.7%	6.00	142,002.58	142,002.58	1,870,443.60	107,808.55	7.59%	5.7%	106,276.70	106,615.29	-0.02%
0019-000	1.9%	1.00	6,521.76	6,521.76	626,718.17		1.04%	2.1%	13,161.08	11,907.65	0.20%
0021-000	1.9%	1.00	21,948.94	21,948.94	3,253,715.92		0.67%	2.1%	68,328.03	61,820.60	0.20%
0025-000	1.9%	1.00	13,748.54	13,748.54	951,202.11		1.45%	2.1%	19,975.24	18,072.84	0.20%
0032-000	1.9%	1.00	0.00	0.00	981,546.20		0.00%	1.6%	15,704.74	18,649.38	-0.30%
0033-000	1.9%	3.00	66,305.47	66,305.47	487,945.86	39,134.88	13.59%	6.8%	33,229.92	9,270.97	4.91%
0039-000	1.9%	1.00	21,019.13	21,019.13	750,179.14		2.80%	2.1%	15,753.76	14,253.40	0.20%
0043-000	5.4%	5.00	85,980.94	85,980.94	1,424,596.00	0.00	6.04%	5.6%	76,928.18	76,928.18	0.20%
0044-000	2.9%	2.00	23,408.69	23,408.69	1,922,754.45		1.22%	3.1%	59,605.39	55,759.88	0.20%
0050-000	5.4%	2.00	38,002.80	38,002.80	364,259.44	0.00	10.43%	5.6%	20,398.53	19,670.01	0.20%
0066-000	1.4%	1.00	0.00	0.00	420,755.45		0.00%	1.6%	6,732.09	5,890.58	0.20%
0070-000	1.4%	1.00	50,718.76	50,718.76	1,129,479.24	50,718.76	5.86%	5.7%	49,588.47	12,114.55	4.33%
0106-000	1.4%	2.00	0.00	0.00	865,324.67		0.00%	1.6%	1,602.64	1,402.31	0.20%
0125-000	1.4%	1.00	0.00	0.00	100,165.18		10.66%	2.1%	4,842.30	4,361.13	0.20%
0141-000	1.4%	1.00	24,576.39	24,576.39	230,585.60		2.42%	2.1%	5,776.03	3,850.69	0.70%
0144-000	4.4%	3.00	56,266.41	56,266.41	2,467,013.17		2.28%	4.6%	113,482.61	108,548.58	0.20%
0145-000	5.4%	8.00	130,284.24	130,284.24	3,218,627.17		4.05%	5.6%	180,243.12	173,805.87	0.20%
0166-000	1.9%	1.00	0.00	0.00	196,666.00		11.00%	2.1%	4,171.99	3,774.65	0.20%
0209-000	2.9%	3.00	69,719.55	69,719.55	2,419,372.66		2.88%	4.6%	111,291.14	70,161.81	1.70%
0224-000	1.9%	1.00	26,897.04	26,897.04	233,848.04		11.50%	2.1%	4,910.81	4,443.11	0.20%
0325-000	4.4%	4.00	113,083.01	113,083.01	4,832,142.04		12.90%	2.1%	2,338.85	1,559.23	0.70%
0467-000	1.9%	1.00	27,067.51	27,067.51	110,970.56		24.39%	2.1%	222,278.53	212,614.25	0.20%
0614-000	1.4%	2.00	27,823.98	27,823.98	2,748,381.43		1.01%	3.1%	85,199.82	38,477.34	1.70%
0620-000	5.4%	6.00	193,843.06	193,843.06	2,018,742.74	53,617.78	9.60%	5.6%	113,049.59	109,012.11	0.20%
0624-000	1.4%	1.00	30,685.87	30,685.87	761,543.31		4.03%	2.1%	15,992.41	10,661.61	0.70%
0705-000	5.4%	1.00	448,908.62	448,908.62	3,605,506.34		12.45%	5.6%	201,908.36	194,697.34	0.20%
0761-000	5.4%	2.00	40,462.51	40,462.51	999,803.22	95,033.06	4.05%	5.6%	55,988.98	53,989.37	0.20%
0767-000	5.4%	3.00	62,366.62	62,366.62	1,471,763.79		4.24%	5.6%	82,418.77	79,475.24	0.20%
0797-000	5.4%	1.00	6,328.44	6,328.44	56,096.58		11.28%	2.1%	1,178.03	1,065.84	0.20%
0878-000	1.9%	1.00	112,406.34	112,406.34	5,474,231.62		2.05%	4.6%	251,814.65	104,010.40	2.70%
0923-000	5.4%	5.00	567,100.23	567,100.23	11,172,106.84		5.08%	5.6%	625,637.98	603,293.77	0.20%
0926-000	1.9%	1.00	12,732.93	12,732.93	1,650,302.85		0.77%	2.1%	34,656.36	31,355.75	0.20%
0927-000	5.4%	3.00	70,152.02	70,152.02	1,699,234.28		4.13%	5.6%	95,157.12	91,758.65	0.20%
0928-000	5.4%	2.00	41,843.13	41,843.13	655,238.72		6.39%	2.1%	36,693.37	35,362.89	0.20%
0929-000	1.9%	1.00	23,345.81	23,345.81	1,936,366.04		1.20%	2.1%	40,705.69	36,828.95	0.20%
0930-000	4.4%	2.00	62,888.06	62,888.06	3,991,983.18		1.93%	3.1%	85,840.57	121,838.23	-1.30%
0935-000	2.9%	2.00	20,314.83	20,314.83	1,171,061.02	25,040.86	1.58%	3.1%	123,751.48	115,767.51	0.20%
0938-000	1.9%	1.00	23,760.12	23,760.12	2,077,431.32		1.14%	2.1%	43,626.06	39,471.20	0.20%
0942-000	5.4%	4.00	100,332.46	100,332.46	2,645,053.13		3.79%	5.6%	148,122.98	142,632.87	0.20%
0943-000	1.9%	1.00	15,641.51	15,641.51	906,936.60		1.72%	2.1%	19,045.67	17,231.80	0.20%
0945-000	1.9%	1.00	28,387.18	28,387.18	2,580,534.77		1.02%	2.1%	54,191.23	49,030.16	0.20%
0946-000	4.4%	8.00	234,588.76	234,588.76	7,267,949.22		3.23%	5.6%	407,005.16	319,789.77	1.20%
0947-000	1.9%	3.00	67,376.16	67,376.16	2,798,048.91		1.34%	3.1%	156,289.02	95,790.05	1.20%
0948-000	1.4%	1.00	10,982.52	10,982.52	5,041,591.36	41,300.07	0.39%	1.6%	44,768.78	46,672.08	0.20%
0951-000	5.4%	4.00	70,908.91	70,908.91	864,297.86		8.20%	5.6%	48,400.68	46,672.08	0.20%
0954-000	1.4%	1.00	2,239,936.89	2,239,936.89	5,634,715.15		0.96%	2.1%	47,038.67	31,359.12	0.70%
0955-000	1.9%	3.00	56,562.31	56,562.31	3,580,967.70		1.00%	3.1%	174,676.17	107,059.59	1.20%
0956-000	2.9%	4.00	62,247.84	62,247.84	1,751,363.66		1.74%	3.1%	111,010.00	103,848.06	0.20%
0957-000	5.4%	4.00	79,292.88	79,292.88	1,751,363.66		5.56%	5.6%	98,076.36	94,573.64	0.20%
0958-000	2.9%	8.00	136,061.67	136,061.67	7,558,311.89		1.80%	3.1%	234,307.67	219,191.04	0.20%
0961-000	1.9%	2.00	7,106.79	7,106.79	1,348,273.15		0.53%	2.1%	28,313.74	25,617.19	0.20%
0962-000	1.9%	1.00	20,724.34	20,724.34	811,469.59		2.55%	2.1%	17,040.86	15,417.92	0.20%
0963-000	1.9%	1.00					1.26%	5.6%	322,160.60	310,654.86	0.20%

Empr Name	Empr #	1995 Duty Disability Calculation				Claims	Salary	Claims Over 5.8%	Claims as % of Salary	1995 Rate	Est. Revenue 1995 Rate	Est. Revenue Unchanged Rate	Change in Rate
		# of Claims	Claims	Salary	Claims Over 5.8%								
Cedarburg	0971-000	2.00	58,192.13	755,866.08	25,579.18	7.70%	5.6%	42,325.14	40,813.53	0.20%			
Cudahy	0972-000	7.00	113,461.06	2,682,037.98		4.23%	5.6%	150,194.13	144,830.05	0.20%			
DePere	0974-000	2.00	8,610.50	2,300,864.92		0.37%	1.6%	36,813.84	32,212.11	0.20%			
Eau Claire	0975-000	12.00	281,771.39	6,967,258.55		4.04%	5.6%	390,166.48	376,231.96	0.20%			
Edgerton	0976-000	1.00	24,743.85	327,495.79		7.56%	2.1%	6,877.41	6,222.42	0.20%			
Fond du Lac	0979-000	15.00	251,726.04	5,025,098.88		5.01%	5.6%	281,405.54	271,355.34	0.20%			
Fort Atkinson	0980-000	1.00	22,481.93	837,528.62		2.68%	2.1%	17,588.10	15,913.04	0.20%			
Green Bay	0981-000	4.00	41,608.05	16,909,311.42		0.25%	1.6%	270,548.98	236,730.36	0.20%			
Hartford	0982-000	1.00	12,375.60	589,975.43		3.55%	2.1%	12,389.48	11,209.53	0.20%			
Janesville	0985-000	14.00	250,175.40	7,046,716.63		2.53%	5.6%	394,616.13	380,522.70	0.20%			
Kenosha	0988-000	18.00	300,473.65	11,887,793.68		3.1%	4.6%	546,838.51	523,062.92	0.20%			
LaCrosse	0989-000	6.00	102,211.66	7,388,014.06		4.25%	3.1%	229,338.44	214,542.41	0.20%			
Madison	0991-000	38.00	1,122,213.69	26,428,257.87		2.10%	4.6%	1,479,982.44	1,427,125.92	1.70%			
Manitowoc	0992-000	4.00	81,151.63	3,862,262.76		1.41%	2.1%	36,551.27	24,367.51	0.70%			
Marinette	0993-000	1.00	24,600.12	1,740,536.53		4.40%	5.6%	138,981.48	134,017.85	0.20%			
Marshfield	0994-000	5.00	109,202.79	2,481,812.09		5.79%	5.6%	127,811.14	123,246.45	0.20%			
Menasha	0995-000	7.00	132,119.09	2,282,341.72	28,372.76	3.48%	5.6%	101,135.18	97,523.21	0.20%			
Menomonee	0996-000	3.00	62,826.65	1,805,985.32		2.63%	4.6%	80,322.47	76,830.19	0.20%			
Merrill	0997-000	2.00	45,978.94	1,746,140.57		5.17%	5.6%	188,427.36	181,697.81	0.20%			
Neenah	1000-000	8.00	174,029.54	3,364,774.25		0.11%	1.6%	114,275.49	99,991.05	0.20%			
Oshkosh	1006-000	1.00	6,057.81	7,142,217.93		4.57%	2.1%	14,955.91	13,531.54	0.20%			
Port Washington	1009-000	1.00	32,559.09	7,12,186.20		2.30%	4.6%	838,376.45	528,541.67	1.70%			
Racine	1010-000	21.00	418,617.41	18,225,574.95		0.59%	2.1%	25,226.46	22,823.94	0.20%			
Rhineland	1011-000	1.00	7,091.86	1,201,280.20		0.83%	2.1%	24,909.77	22,537.41	0.20%			
Rice Lake	1012-000	1.00	9,792.36	1,186,179.51		1.23%	2.1%	14,148.77	9,432.51	0.70%			
Shawano	1016-000	1.00	8,288.14	673,751.03		0.86%	2.1%	128,083.18	115,884.78	0.20%			
Sheboygan	1017-000	3.00	53,370.93	6,099,199.17		7.29%	5.6%	156,106.13	150,530.91	0.20%			
South Milwaukee	1019-000	9.00	203,170.39	2,787,609.41	0.00	3.14%	5.6%	175,133.07	168,878.32	0.20%			
Stevens Point	1021-000	6.00	98,302.97	3,127,376.27		11.46%	6.6%	246,922.82	227,385.05	0.52%			
Superior	1023-000	21.00	427,242.26	3,727,623.70	285,098.71	4.96%	5.6%	86,898.41	83,794.90	0.20%			
Two Rivers	1024-000	5.00	76,894.30	1,551,757.33		1.49%	2.1%	40,442.30	36,590.65	0.20%			
Watertown	1025-000	1.00	28,740.81	1,925,823.77		1.17%	3.1%	255,608.19	239,117.33	0.20%			
Waukesha	1026-000	7.00	96,118.20	8,245,425.33		1.41%	3.1%	125,898.83	117,776.32	0.20%			
Wausau	1028-000	4.00	57,408.58	4,061,252.50		1.44%	3.1%	278,540.85	260,570.47	0.20%			
West Allis	1029-000	5.00	129,621.72	8,985,188.62		1.56%	3.1%	364,819.59	341,282.85	0.20%			
West Bend	1030-000	13.00	184,104.86	11,768,374.02		5.16%	5.6%	160,137.20	154,418.01	0.20%			
Westconsin Rapids	1031-000	5.00	147,578.90	2,859,592.78		4.15%	5.6%	150,130.08	144,768.29	0.20%			
Vil. of Fox Point	1035-000	6.00	111,234.57	2,680,894.35		9.21%	5.6%	66,605.75	64,226.97	0.20%			
Vil. of Greendale	1036-000	5.00	109,495.71	1,189,368.41	0.00	5.29%	5.6%	107,724.13	103,876.84	0.20%			
Vil. of Kohler	1037-000	4.00	101,827.82	1,923,645.23		14.29%	2.1%	3,807.64	3,445.01	0.20%			
Vil. of Niagara	1039-000	1.00	25,908.51	181,316.10		0.00%	1.6%	2,697.02	2,359.89	0.20%			
Vil. of River Hills	1042-000	1.00	0.00	168,563.87		2.31%	2.1%	13,230.56	11,970.50	0.20%			
Vil. of Shorewood	1044-000	1.00	14,525.98	630,026.55		1.37%	3.1%	70,001.57	42,904.19	1.20%			
Vil. of West Milwaukee	1047-000	2.00	30,993.50	2,258,115.11		1.08%	2.1%	16,814.72	15,213.31	0.20%			
Vil. of Whitefish Bay	1049-000	1.00	8,857.21	800,700.78		1.85%	3.1%	58,656.57	54,872.27	0.20%			
Vil. of Germantown	1050-000	3.00	31,259.26	1,892,147.29		1.30%	2.1%	21,871.03	19,788.08	0.20%			
Vil. of Butler	1147-000	1.00	13,562.78	1,041,477.81		9.21%	2.1%	7,004.00	6,336.95	0.20%			
Muskego	1188-000	1.00	30,713.88	333,523.65		1.58%	2.1%	25,479.80	23,053.15	0.20%			
Vil. of Ashwaubenton	1277-000	1.00	19,196.35	1,213,323.68		2.12%	2.1%	34,673.21	31,371.00	0.20%			
Vil. of Elm Grove	1410-000	1.00	34,982.61	1,651,105.16		1.22%	2.1%	15,525.02	14,046.44	0.20%			
Brookfield	1412-000	7.00	9,014.61	739,286.54		2.69%	4.6%	232,724.16	222,605.72	0.20%			
New Berlin	1413-000	4.00	136,004.64	5,059,220.93		3.76%	5.6%	150,559.74	145,182.61	0.20%			
Vil. of Brown Deer	3659-000	4.00	99,504.26	2,688,566.83		2.70%	4.6%	86,713.03	82,942.90	0.20%			
Town of Beloit	3984-000	3.00	52,038.57	1,885,065.87		5.47%	5.6%	40,391.56	38,949.01	0.20%			
Balance of State		0.00	39,420.29	721,277.94	0.00	0.00%	1.6%	1,386,772.72	1,213,426.13	0.20%			
			0.00	86,673,295.12									
			563.00	11,466,785.50	547,619,663.84								
						2.09%	4.2%	18,492,091.77	16,167,712.68				

Section 40.65 Duty Disability

Summary of Benefits

Section 40.65 duty disability benefits for protective occupation participants were added in 1982. Benefits are summarized below.

Eligibility. Duty-related injury or disease that is likely to be permanent, which causes a protective occupation participant to retire, accept reduced pay or light duty assignment or, in some cases, that impairs promotional opportunities.

Amount. 80% of salary (75% if partially disabled), less the following offsets.

Social Security

Unemployment compensation

Worker's compensation

Any other WRS benefit

All earnings from the employer under which the disability occurred

A percent of other earnings as follows:

1/3 of earnings less than 40% of monthly salary

1/2 of earnings between 40% and 80% of monthly salary

2/3 of earnings over 80% of monthly salary.

Survivor Benefits.

Pre-5/3/88:

1/3 of earnings to surviving spouse, plus

\$15/month to each unmarried child under age 18.

Post-5/3/88:

1/2 of earnings to surviving spouse, less amounts payable on behalf of surviving children

1/10 of earnings to each unmarried child under age 18.

Increases After Retirement.

To age 60: In accordance with WRS salary index.

After age 60: In accordance with WRS dividend increases.

Contributions. Vary by experience and group size.

Section 40.65 Duty Disability
Benefits Being Paid December 31, 1993
By Year Incurred

Year Incurred	No.	Benefits		Actuarial Liability
		Annual \$	% of Payroll	
1982	18	\$ 364,221	.07%	\$ 3,703,525
1983	19	423,972	.08	4,043,377
1984	41	901,055	.17	8,945,365
1985	54	1,120,955	.22	11,977,849
1986	56	1,330,153	.26	14,156,017
1987	50	1,086,785	.21	11,647,345
1988	63	1,320,531	.25	14,408,317
1989	69	1,239,451	.24	13,863,961
1990	56	918,734	.18	10,819,861
1991	52	1,020,742	.20	11,993,545
1992	57	1,311,834	.25	15,240,997
1993	15	334,305	.06	2,315,989
Totals	550	\$11,372,737	2.19%	\$123,116,148

Reporting for 1992 and 1993 is incomplete. Conclusions can not yet be drawn regarding these years.

Benefits Being Paid December 31, 1993
By Type of Recipient

	No.	Annual \$	% of Payroll
Disabled participants	523	\$11,116,795	2.14%
Survivor beneficiaries	27	255,942	0.05
Total	550	\$11,372,737	2.19%

Section 40.65 Duty Disability

Annual Benefits

Before and After Offsets

December 31, 1993

	Offsets	Annual \$
Annual benefits before offsets		\$16,725,648
Offsets		
Social Security	\$ 544,636	
Unemployment Compensation	0	
Worker's Compensation	442,420	
WRS Benefits		
- Separation	526,465	
- Regular Disability	2,559,973	
- Special Disability	1,266,994	
- Normal Retirement		
Earnings	<u>249,115</u>	
Total Offsets	5,639,604 *	
Adjustment for offsets greater than base benefit	<u>286,693</u>	
Net Offsets	\$5,352,911	
Annual benefits after offsets		\$ 11,372,737
Present value of benefits being paid		\$123,116,148
Reserve for incurred but not reported claims		<u>4,630,000</u>
Total		\$127,746,148

* Total offsets are 34% of gross benefits before offsets.

**Number of Claims
With "X" Offsets Applied**

"X"	Number
0	102
1	331
2	101
3	16
Total Claims	550

**Section 40.65 Duty Disability
Comparative Statement of Financial Activity**

Year	Contributions	Benefits		Expenditures		Interest Charge	Total	Ending Balance	Average Contrib. Rate
		Annual \$	% Incr.	Admin. Charge	Total				
1984	\$	\$	- %	\$	\$	\$	\$	\$	- %
1985	633,501	1,343,755	-	0	160,822	1,504,577	(813,893)	57,193	0.2
1986	1,259,167	2,474,345	84	0	417,606	2,891,951	(2,446,677)	(813,893)	0.4
1987	1,739,234	3,262,157	32	0	416,385	3,678,542	(4,385,985)	(2,446,677)	0.5
1988	3,939,946	4,662,629	43	348,018 #	486,800	5,497,457	(5,943,496)	(4,385,985)	1.1
1989	5,257,471	5,906,152	27	144,629	1,121,646	7,172,427	(7,858,452)	(5,943,496)	1.4
1990	9,125,470 *	7,178,185	22	75,481	701,016	7,954,682	(6,687,664)	(7,858,452)	2.1
1991	10,653,019	8,188,603	14	130,203	773,655	9,092,461	(5,127,106)	(6,687,664)	2.3
1992	12,244,608	9,288,487	13	120,462	476,392	9,885,341	(2,767,839)	(5,127,106)	2.5
1993	14,410,852 *	10,397,896	12	160,981	105,814	10,659,691	983,322	(2,767,839)	2.8

* Includes adjustment to beginning balance.

Includes 3-1/2 years of administrative expense charges.

Section 40.65 Duty Disability Comments

Financial Progress. As of December 31, 1993, the payout rate from this program has increased to 2.19% of covered payroll (up from 1.99% a year ago). Pertinent elements of the present financial picture include:

- The plan cash deficit was eliminated during 1993.
- The average total contribution rate for 1993 was approximately 2.8% of covered payroll. This rate does not appear to be sufficient to achieve a fully reserved status under which plan assets equal the present value of benefits being paid (currently \$123 million).
- The contribution rate currently in effect (1994) will generate approximately 3% of covered payroll. This rate appears to be sufficient to achieve a fully reserved status over a 40 year period.
- To target a fully reserved status over a 30 year period, the average contribution rate would have to be increased by 0.2% of payroll to 3.2% as follows:

Provision for annual incurred claims	2.2%
30 year amortization of accrued shortfall	1.0
Total	3.2%

Two rate schedules are presented on page II-6 for the Board's consideration. Alternate A is a continuation of the present rate which would amortize the unfunded liability over approximately 40 years. Alternate B is intended to generate revenues to achieve full reserve funding over 30 years.

Interaction with WRS. The weighted average total protective occupation contribution rate under WRS has decreased by 2.4% of payroll over the last 8 years. Much of the rate decrease is believed to be a result of a shifting of liabilities to the 40.65 program. Under present law, this liability shift will continue since some benefits currently being pre-funded in WRS will become payable under 40.65 instead of under WRS. We will be prepared to discuss options for statutory change the board could consider to stabilize rates in both programs.

**Section 40.65 Duty Disability
Rate Schedule
December 31, 1993 Valuation**

% of Covered Payroll		Applicable to
Alternate A (Present)	Alternate B	
1.4%	1.6%	Groups with claims payout during the prior year of less than or equal to 0.5% of payroll.
1.9	2.1	Groups with one claim in which the payout during the prior year exceeded 0.5% of payroll, and groups with two or more claims in which the payout was more than 0.5% but less than 1.0% of payroll.
2.9	3.1	Groups with two or more claims in which the payout during the prior year was more than 1.0% but less than 2.0% of payroll.
4.4	4.6	Groups with two or more claims in which the payout during the prior year was more than 2.0% and less than 3.0% of payroll.
5.4% + 1/2 of claims over 5.4%*	5.6% + 1/2 of claims over 5.6%*	Groups with two or more claims in which the payout exceeded 3.0% during the prior year.

* The 50% experience factor is based on claims incurred during the last 4-1/2 years.

It would not be unreasonable to continue the present rate schedule (Alternate A). However, in light of (i) the low ratio of assets to liabilities in this program, and (ii) the largely offsetting WRS rate decrease for the protective occupation groups, we recommend adoption of Alternate B effective January 1, 1995.

[Note: Alternate B rates were approved by ETF Board on 6/30/94]



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS
AND THE RETIREMENT RESEARCH COMMITTEE

BLAIR L. TESTIN
RESEARCH DIRECTOR

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MADISON WISCONSIN 53703

(608) 267-0507
FAX (608) 267-0675

June 5, 1995

TO: Retirement Research Committee Members
FROM: Blair Testin, RRC Staff *B.T.*
RE: **40.65 Death and Disability Benefits and Issues**

Old s. 66.191 Law. Prior to 1982, duty-related death and disability benefits for protective occupation participants (P.O.P.) were governed by s. 66.191, Stats. This benefit program was administered by DILHR and was completely separate from the Wisconsin Retirement Fund (WRF). The benefits were paid directly by the employer involved and were in lieu of disability benefits payable from the state retirement plan, but they did not effect eligibility for regular retirement benefits under the WRF.

Problems noted with the old 66.191 program included the following:

- The 66.191 benefits were not coordinated with other income replacement programs such as the WRF, Social Security, Worker's Compensation, etc.
- The 66.191 benefits were not funded on an actuarial basis, but rather were paid by each employer from current salary appropriations.
- Various insurance carriers were unwilling to insure this program and, hence, there was no spreading of employer risk.
- Because the benefit was based upon one-half the salary at the time of disability without indexing, the benefit could become inadequate for a participant injured at an early age.
- Because 66.191 benefits were in addition to WRF retirement benefits, the two programs could provide overcompensation for those disabled near retirement.

1981 Session. Because of the problems noted above, the RRC established a special Ad Hoc Committee composed of both employee and employer representatives which developed a new death and disability program addressing most of the problem areas noted with the old program. The new plan essentially provided a guaranteed income replacement of 80% of the monthly salary paid

at the time of disability, subject to indexing, but offset by any income from other sources such as the state retirement plan, Worker's Compensation, Social Security, or reemployment. This new program had little or no precedent in other states. These recommendations were enacted into law by Ch. 278, Laws of 1981, replacing the benefits previously provided under s. 66.191, Stats.

1987 Session. After enactment of the new program, it became apparent that the number of applications and costs of benefits were greatly exceeding the level assumed by the original actuarial valuation. It was also noted that the role of the ETF in determining benefits under s. 40.65 was unclear, that spousal benefits were generally inadequate if the disabled participant died from such injuries, and that there was not a clear ETF responsibility to check for offsets from other income sources.

Because of these shortcomings with the new program, the RRC appointed a new Ad Hoc Subcommittee to provide recommended changes to the s. 40.65 program. In addition to addressing the above issues, the Ad Hoc Committee recommended some reductions in the 80% guarantee for those who were not totally disabled or for those who had over 25 year of service and, hence, had substantial retirement benefit accruals. The recommendations of the Ad Hoc Committee which may best be defined as "fine-tuning" of the 40.65 program were enacted into law by 1987 Wis. Act 363.

1993 Session. In spite of the fine-tuning and other adjustments by the 1987 legislature, the costs of the s. 40.65 program have continued to grow, and the plan currently has a substantial unfunded liability. during the 1993 session several counties adopted resolutions requesting revisions to the 40.65 program, and the DETF continued to note problems in the administration of the death and disability program.

Because of these continuing concerns, a special work group was appointed by the RRC in 1993, including one of the Co-Chairs of the RRC, and staff from the Committee and the ETF. Employer and employee representatives were not included in this work group.

An issue paper was presented to the RRC at its meeting of December 1, 1993, and noted the following issues:

- There is little difference in the disability benefits provided for those who are totally disabled vs. those who are partially disabled.
- The duty disability benefits are essentially lifetime income regardless of changes in the circumstances including recovery from the disability.

40.65 Death and Disability Benefits and Issues

Page 3

- s. 40.65 program would benefit from a clarification as to the nature and degree of disability for which benefits are intended.
- Present provisions do not encourage a disabled protective to continue to work for the original employer, even if such employment is offered as may now be required under ADA law.
- There is no requirement that a disabled protective apply for a worker's compensation benefit before applying for 40.65 disability benefits.
- Some employers may use the s. 40.65 program to terminate employees who are deemed undesirable.
- There are presently no time limits governing applications, appeals, or when an employer must act relative to a 40.65 benefit application.
- There appears to be some cost shifting by employees and employers from the Worker's Compensation program to the duty disability program, which inflates the costs of the latter.
- There is no requirement that a person be a protective or active participant upon date of application.

The RRC took no specific action relative to the issues and possible alternatives that were presented in the December 1, 1993 memo.

1995 Session. There continues to be correspondence and concern on the s. 40.65 program during the current session. Correspondence from AFSCME dated 12/12/94 requested additional information and an update on the 1993 memo to the RRC (copy attached). Also, correspondence from the Wisconsin Alliance of Cities which included signatures of three representatives of employee groups requested the DETF to provide additional information on the 40.65 program (copy attached). Lastly, Mr. Korpady of the DETF staff did respond to the Wisconsin Alliance of Cities with added information including a list of current contribution rates for the various employers covered by the 40.65 program, and also excerpts from the most recent actuarial valuation which led to additional increases in s. 40.65 costs for 1995 (copy enclosed).

RRC Staff Suggestion. It is apparent that problems relating to the administration, benefit levels, qualifications and costs of the s. 40.65 death and disability program continue. The RRC remains the body with the responsibility to make recommendations to the legislature on pension issues as they arise. Therefore, the RRC staff suggests the following:

- That a subcommittee of RRC members only be appointed and chaired by an RRC officer.
- That technical assistance be provided to the subcommittee by ETF staff involved in the program administration (Korpady).
- That the RRC staff memo dated 12/1/93 be a starting point for discussion of problem areas.
- That public input be invited from both employee and employer representatives.
- That the subcommittee develop and submit recommendations to the RRC for possible introduction during the 1995 legislative session.

ATTACHMENTS

- December 1, 1993 RRC Staff Memo on 40.65.
- AFSCME Letter Dated December 12, 1994.
- Wisconsin Alliance of Cities Letter Dated February 8, 1995.
- ETF Memo Dated February 23, 1995.

BOARD	DATE	ITEM #
JJ	06/20/96	2
ETF	06/21/96	5

14

Wisconsin Department of Employee Trust Funds

Compiled 15th Annual Actuarial Valuations As of December 31, 1995

Including:

- ◆ Wisconsin Retirement System
- ◆ Section 40.65 Duty Disability
- ◆ Section 40.73(1)(d) Death Benefits
- ◆ Accumulated Sick Leave Conversion Credit Programs

SECTION 40.65 DUTY DISABILITY SUMMARY OF BENEFITS

Section 40.65 duty disability benefits for protective occupation participants were added in 1982. Benefits are summarized below.

Eligibility. Duty-related injury or disease that is likely to be permanent, which causes a protective occupation participant to retire, accept reduced pay or light duty assignment or, in some cases, that impairs promotional opportunities.

Amount. 80% of salary (75% if partially disabled), less the following offsets.

- Social Security
- Unemployment compensation
- Worker's compensation
- Any other WRS benefit
- All earnings from the employer under which the disability occurred
- A percent of other earnings as follows:
 - 1/3 of earnings less than 40% of monthly salary
 - 1/2 of earnings between 40% and 80% of monthly salary
 - 2/3 of earnings over 80% of monthly salary.

Survivor Benefits.

Pre-5/3/88 and certain state employees:

- 1/3 of earnings to surviving spouse, plus
- \$15/month to each unmarried child under age 18.

Post-5/3/88:

- 1/2 of earnings to surviving spouse, less amounts payable on behalf of surviving children
- 1/10 of earnings to each unmarried child under age 18.

Increases After Retirement.

To age 60: In accordance with WRS salary index.
After age 60: In accordance with WRS dividend increases.

Contributions. Vary by experience.

**SECTION 40.65 DUTY DISABILITY
BENEFITS BEING PAID DECEMBER 31, 1995
BY YEAR INCURRED**

Year Incurred	No.	Benefits		Actuarial Liability
		Annual \$	% of Payroll	
1982	18	\$ 371,122	.06%	\$ 3,621,732
1983	19	449,909	.08	4,065,888
1984	40	927,227	.16	8,767,908
1985	54	1,169,578	.20	12,034,980
1986	55	1,401,488	.24	14,373,360
1987	50	1,131,070	.19	11,757,324
1988	62	1,396,238	.24	14,752,944
1989	70	1,312,495	.22	14,192,436
1990	55	982,316	.17	11,242,944
1991	56	1,127,114	.19	12,703,536
1992	62	1,421,817	.24	16,632,228
1993	48	928,134	.16	11,070,612
1994	22	490,809	.08	5,667,696
1995	9	129,606	.02	1,584,312
Totals	620	\$13,238,923	2.25%	\$142,467,900

Reporting for 1994 and 1995 is incomplete. Conclusions can not yet be drawn regarding these years.

**BENEFITS BEING PAID DECEMBER 31, 1995
BY TYPE OF RECIPIENT**

	No.	Annual \$	% of Payroll
Disabled participants	591	\$12,978,712	2.21%
Survivor beneficiaries	29	260,211	0.04
Total	620	\$13,238,923	2.25%

**SECTION 40.65 DUTY DISABILITY
ANNUAL BENEFITS
BEFORE AND AFTER OFFSETS
DECEMBER 31, 1995**

	Offsets	Annual \$
Annual benefits before offsets		\$ 19,474,917
Offsets		
Social Security	\$ 773,142	
Unemployment Compensation	0	
Worker's Compensation	504,486	
WRS Benefits		
- Separation	583,623	
- Disability	2,716,035	
- Normal Retirement	1,677,217	
Earnings	<u>240,234</u>	
Total Offsets	6,494,737	
Adjustment for offsets greater than base benefit	<u>258,563</u>	
Net Offsets	\$6,236,174	
Annual benefits after offsets		\$13,238,743
Present value of benefits being paid		\$142,467,900
Reserve for incurred but not reported claims		<u>3,168,000</u>
Total		\$145,635,900

* Total offsets are 32% of gross benefits before offsets.

**NUMBER OF CLAIMS
WITH "X" OFFSETS APPLIED**

"X"	Number
0	112
1	368
2	125
3	15
Total Claims	620

**SECTION 40.65 DUTY DISABILITY
COMPARATIVE STATEMENT OF FINANCIAL ACTIVITY**

Year	Contributions		Benefits		Admin. Charge	Interest Credit (Charge)	Ending Balance	Average Contrib. Rate
	\$	%	Annual \$	% Incr.				
1984	\$		\$	- %	\$	\$	\$ 57,193	- %
1985	633,501		1,343,755	-	0	(160,822)	(813,893)	0.2
1986	1,259,167	84	2,474,345	84	0	(417,606)	(2,446,677)	0.4
1987	1,739,234	32	3,262,157	32	0	(416,385)	(4,385,985)	0.5
1988	3,939,946	43	4,662,629	43	348,018#	(486,800)	(5,943,496)	1.1
1989	5,257,471	27	5,906,152	27	144,629	(1,121,646)	(7,858,452)	1.4
1990	9,125,470*	22	7,178,185	22	75,481	(701,016)	(6,687,664)	2.1
1991	10,653,019	14	8,188,603	14	130,203	(773,655)	(5,127,106)	2.3
1992	12,244,608	13	9,288,487	13	120,462	(476,392)	(2,767,839)	2.5
1993	14,410,852	12	10,392,896	12	160,981	(105,814)	983,322	2.8
1994	16,242,342*	13	11,786,839	13	161,127	219,777	5,524,539	3.0
1995	19,738,999*	8	12,748,266	8	183,922	1,007,019	13,322,102	3.4

* Includes adjustment to beginning balance.

Includes 3-1/2 years of administrative expense charges.

**SECTION 40.65 DUTY DISABILITY
COMMENTS**

Financial Progress. As of December 31, 1995, the payout rate from this program has decreased to 2.25% of covered payroll (down from 2.27% a year ago). Pertinent elements of the present financial picture include:

- The plan cash deficit was eliminated during 1993. During 1995 benefit reserves increased from \$5.5 million to \$13.3 million.
- The contribution rate currently in effect (1996) will generate approximately 3.4% of covered payroll. This rate appears to be sufficient to achieve a fully reserved status over a 27 year period (down from 40 years) provided that the group size stabilizes at about its current level, as follows:

Provision for annual incurred claims	2.2%
27 year amortization of accrued shortfall	<u>1.2</u>
Total	3.4%

*Was to
lost .2%
credited to
go up next yr*

The financial status of this program has improved dramatically over the last two years. In light of this improvement, a continuation of the present rate schedule is recommended, as shown on page II-6.

Interaction with WRS. The weighted average total protective occupation contribution rate under WRS has decreased by over 4% of payroll over the last 10 years. Much of the rate decrease is believed to be a result of a shifting of liabilities to the 40.65 program. Under present law, this liability shift will continue since some benefits currently being pre-funded in WRS will become payable under 40.65 instead of under WRS. We will be prepared to discuss options for statutory changes the board could consider to stabilize rates in both programs.

**SECTION 40.65 DUTY DISABILITY
RATE SCHEDULE: PRESENT AND PROPOSED
DECEMBER 31, 1995 VALUATION**

% of Covered Payroll		Applicable to
Present	Proposed	
1.6%	1.6%	Groups with claims payout during the prior year of less than or equal to 0.5% of payroll.
2.1	2.1	Groups with one claim in which the payout during the prior year exceeded 0.5% of payroll, and groups with two or more claims in which the payout was more than 0.5% but less than 1.0% of payroll.
3.1	3.1	Groups with two or more claims in which the payout during the prior year was more than 1.0% but less than 2.0% of payroll.
4.6	4.6	Groups with two or more claims in which the payout during the prior year was more than 2.0% and less than 3.0% of payroll.
5.6% + 1/2 of claims over 5.6%*	5.6% + 1/2 of claims over 5.6%*	Groups with two or more claims in which the payout exceeded 3.0% during the prior year.

* The 50% experience factor is based on claims incurred during the last 4-1/2 years.



August 1996

DUTY DISABILITY PROGRAM

The Duty Disability program provides lifetime disability benefits to state and local government protective workers, such as police officers and firefighters, who sustain on-the-job injuries that prevent them from continuing to work in their protective positions. Over 16,000 employees are in protective occupations, and 627 former workers or their families are receiving benefits. Benefit payments in 1995 were \$12.7 million.

In recognition of the greater risks to which protective workers are exposed, duty disability benefit levels are higher than those for other government employees. Benefits can equal up to 80 percent of the former protective worker's final salary and are exempt from state and federal income taxes. Benefits are paid for life and are adjusted annually for inflation. For 1996, the average annual tax-exempt benefit award is \$31,388.

Since 1982, when benefits increased from 50 to 80 percent of final salary, the number of protective workers filing new duty disability claims increased from approximately 10 per year to an average of 49 per year, where it appears to have stabilized. However, the total number of benefit recipients is increasing steadily because fewer than one person per year leaves the program. While most employers support the program in recognition of the significant risks to which protective workers are exposed, some have questioned the reasonableness, and in some cases the equity, of the current program.

Benefit Levels Could Be Adjusted

When the program was modified in 1982, it was expected that partially disabled protective workers would eventually find other employment. Our review of program files showed that 73 percent of recipients had estimated disabilities of 20 percent or less. The most common injuries were back injuries, with an estimated average disability level of 13 percent, and knee injuries, with an average disability level of 16 percent. Rehabilitation experts and physicians we spoke with indicated that non-protective workers with such disability levels typically would be expected to re-enter the workforce in positions that require little to moderate physical exertion. However, on January 1, 1996, 93.6 percent of duty disability recipients with disability levels of 20 percent or less reported no employment earnings. Therefore, some have questioned whether the program contains sufficient incentives for physically able participants to pursue new careers.

The Legislature could consider several options to increase the incentives for recipients who are physically able to re-enter the workforce. For example, benefit recipients could be required to receive a functional capacity evaluation from the Division of Vocational Rehabilitation, which would determine their ability to re-enter the workforce and the types of careers for which they

would be suited. In addition, to encourage re-training, tuition at the University of Wisconsin and the Wisconsin Technical College System could be waived for duty disability recipients, as it currently is for children of slain police and firefighters. Further, time limits could be placed on the number of years for which recipients who are able to pursue new careers would be eligible for benefits.

Periodic Medical Reviews Are Needed

Once a physician concludes an injury is likely to be permanent and an employee is certified for duty disability payments, no reassessment is ever made to determine if the injury has healed. However, for some injuries, a definitive assessment of permanency cannot be made. In our review, we noted several examples in which an individual's injury appears to have healed. In one case, a duty disability recipient submitted a worker's compensation claim several years after being certified for duty disability with a back injury, and the physician found no evidence of a disability. In another case, 13 months after being approved for duty disability benefits because of a 12 percent disability to the back, a former protective employee spent over five months on active military duty. However, without express statutory authority, the Department of Employee Trust Funds, which is responsible for administering the Duty Disability program, is unable to review an individual's duty disability status.

Improvements to Program Administration Are Possible

To qualify for program benefits, an applicant must show that his or her disability is likely to be permanent, that it caused retirement, a reduction in pay or position, or relegation to "light duty," or that it adversely affected opportunities for promotion. Applicants must file medical reports, and employers must certify that injuries occurred on the job. Several steps can be taken to improve the comprehensiveness of the Department's application-review process. Under current procedures, physicians are expected to make non-medical judgments, while the role of employers in reviewing applications appears to be limited. The statutes could be amended to transfer from physicians to employers the responsibility for determining whether an injury caused an employee to be assigned light duty or receive a reduction in pay or position, or whether it adversely affected promotional opportunities. Physicians should retain responsibility for medical decisions, such as determining the degree of an injury and whether it is likely to be permanent.

DUTY DISABILITY PROGRAM

Wisconsin Legislative Audit Bureau

August 1996

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Program Benefits

- ◆ Lifetime benefits
- ◆ Up to 80% of final salary
- ◆ Exempt from state and federal taxes
- ◆ Indexed for inflation
- ◆ Average benefit is \$31,388

Program Recipients

- ◆ 627 recipients
 - 598 former employes
 - 29 surviving spouses

- ◆ For claims from 1988 through 1995
 - 54.4% local law enforcement
 - 27.3% firefighters and EMTs
 - 18.3% state employes

Eligibility Criteria

- ◆ Permanent disability and
- ◆ Reduction in pay or position, or
- ◆ Light duty assignment, or
- ◆ Promotional opportunities affected, or
- ◆ Retirement caused by disability

Type of Disability

Back	28.3%
Knee	14.4%
Shoulder	12.3%
Neck	10.2%
Heart	6.3%
All other	28.5%

includes a small % of shoulder

includes a small % of neck

which is

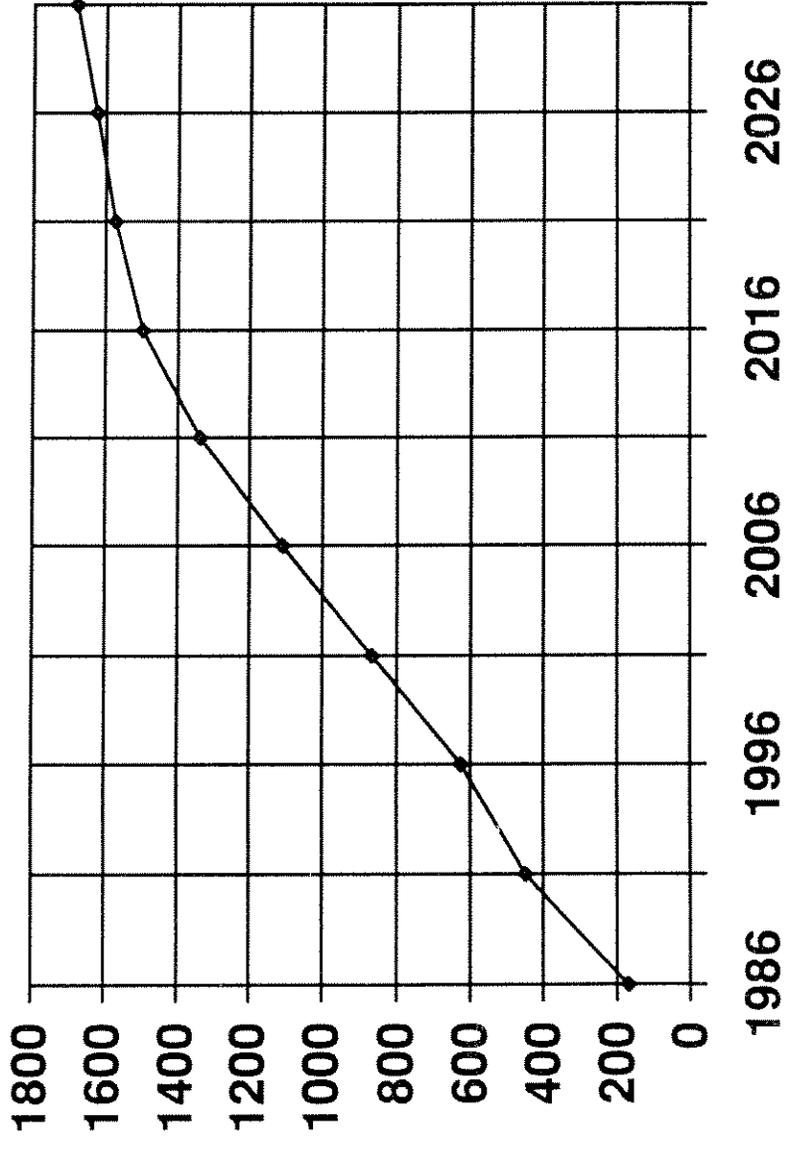
Degree of Disability

10% or less	42.8%
11 to 20%	30.2%
21 to 50%	20.7%
51% or greater	6.3%
	100%

Program Trends

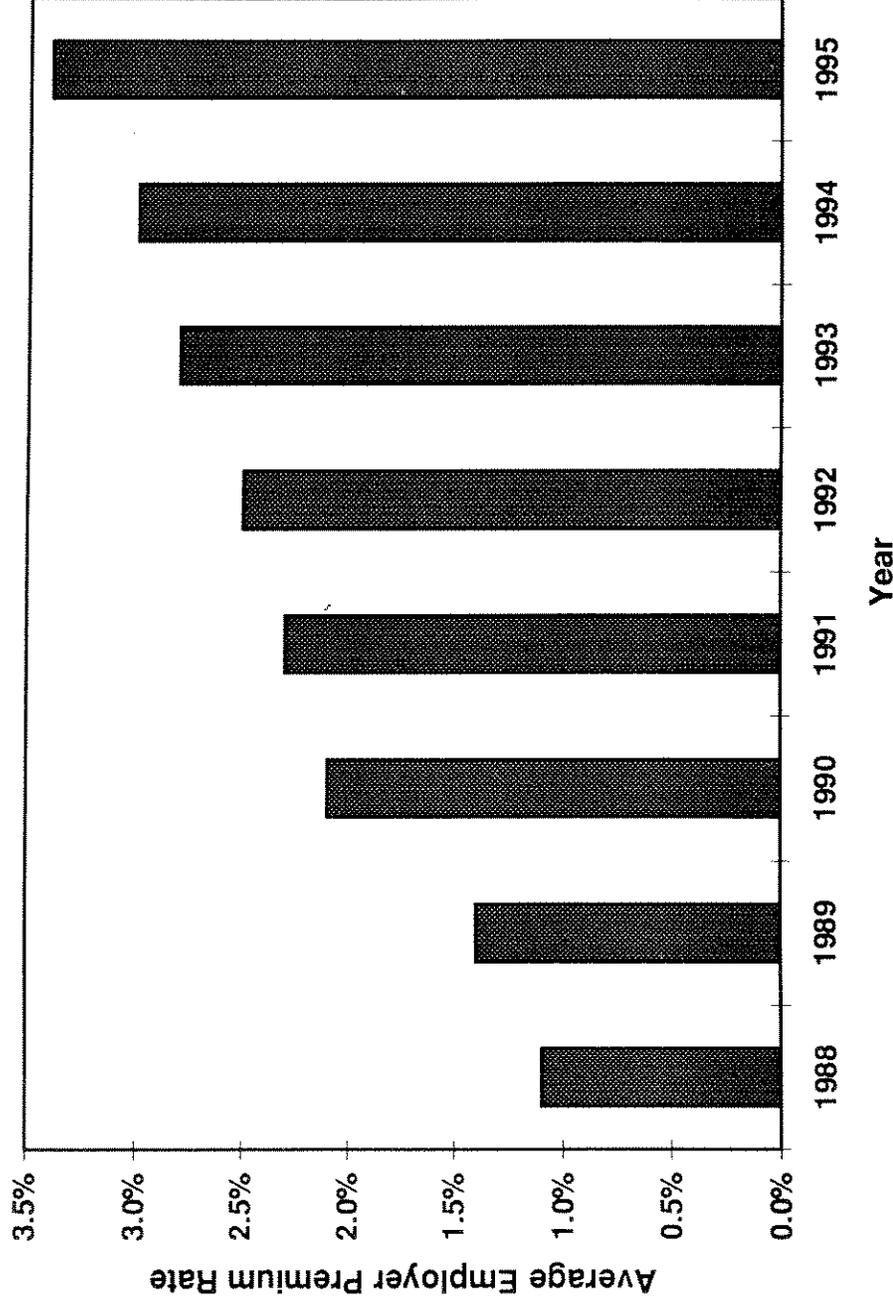
- ◆ Enrollment is increasing
- ◆ Costs are increasing

PROJECTED ENROLLMENT GROWTH

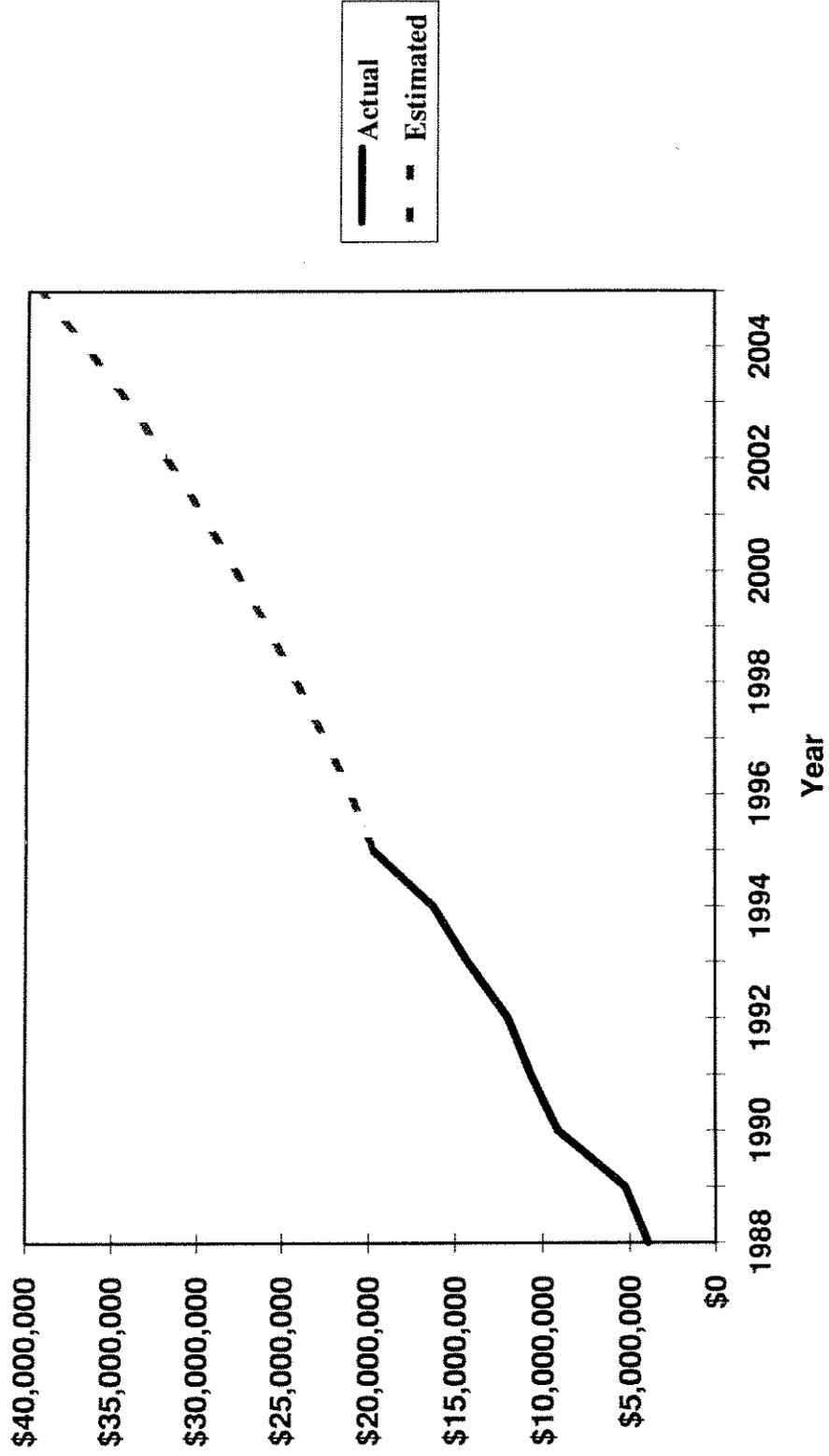


LAB STILL only 40-50 per year

PREMIUMS AS PERCENT OF PAYROLL



PREMIUMS



Employer Concerns

- ◆ Recipients who are physically able do not re-enter the workforce
- ◆ Benefit levels pose equity questions
- ◆ Eligibility review process needs improvement

Program Modifications

- ◆ Periodic eligibility review
- ◆ Light duty
- ◆ Incentives for employment
- ◆ Adjust spousal benefits

Application Review

Use Worker's Comp. medical exam

- ◆ Strengthen medical examination
- ◆ Provide medical information to employers
- ◆ Provide appeal data
- ◆ Clarify employers' role
- ◆ Clarify physicians' role



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS
AND THE RETIREMENT RESEARCH COMMITTEE

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April 23, 1997

Save for 5/12 mtg.

APR 25 1997

TO: Senator Rick Grobschmidt and Representative Judith Klusman
Co-Chairperson, JSCRS/RRC

FROM: Blair Testin, JSCRS/RRC Consultant

RE: Past Memos on s. 40.65

During our brief discussion after the Friday RRC Protective Study Subcommittee meeting, you asked for past memos dealing with the 40.65 program. I am enclosing the last memos furnished to the RRC on this issue—June 5, 1995. The yellow pages reflect an updating relative to the 1995 session. The attached white pages dated 1993 reflect the presumed problem areas under the 40.65 program and possible reactions or courses of action.

It is this white memo that I believe could be the basis for discussion at the next Subcommittee meeting on s. 40.65 issues. Perhaps not all reactions or courses of action are feasible, but presumably some are. I have also invited staff of the Legislative Audit Bureau to be present to answer questions on their 1996 audit of the s. 40.65 program.

If you wish to have public testimony on the possible reactions in the 1993 memo, please let me know.

BT:db

Enc.

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

TO: Members Special Subcommittee on 40.65 Benefits

FROM: Steve Urso

DATE May 12, 1997

RE: Changes to Wis. Stats. 40.65

Ladies and Gentlemen:

WPPA has been requested to provide input into potential changes being proposed to amend the current duty disability program for protective service employees. We desire to provide input but we want to emphasize our proposals are meant to strengthen and improve the program not to diminish it. The duty disability program exists to protect injured workers no longer able to perform as law enforcement officers and firefighters, to provide the employer with relief from the economic burden of trying to provide benefits for employees who can no longer work and to protect the public by employing physically capable personnel to serve the public's emergency services needs.

WPPA participated in the late 1970's and early 1980's in the legislative process that resulted in the current 40.65 statute. Prior to 1982 the statute used was 66.191. Two things need to be remembered about 66.191 recipients. First, in order to qualify for benefits they first had to retire before they could receive their monthly benefit. Second, the benefit level remains at 50 percent of salary without any cost of living adjustment.

The current 40.65 program was designed to be non-adversarial and to require sufficient medical evidence to support the claim. We believe the current program works well. But like any program there exists areas that could be improved.

We propose to the Subcommittee the following:

1. Annual medical recertification by a licensed physician of illness or injury should be added into the current statute.
2. Annual monetary benefit adjustments based upon the CPI should be added into the statute.
3. Incentives for employers to return to gainful employment in areas other than law enforcement or firefighting should be added into the statute. The

Members Special Subcommittee on the 40.65 Benefits

May 12, 1997

Page 2

should be in the area of education and retraining in order to qualify the worker for a new profession.

4. Workers should be given a tuition holiday if after duty disability retirement they enroll in a University of Wisconsin System course of instruction.

We believe these changes to be fair and equitable to the employer and the disabled employee. Our goal is not to adversely affect the opportunities for workers who through no fault of their own become incapacitated and unable to continue in the protective services. We want to find ways to assist persons begin new careers and continue to use their desire to participate in the public service to the benefit of all the people of Wisconsin.

SJU:jep

STATE OF WISCONSIN

RRC PROTECTIVE STUDY SUBCOMMITTEE

MONDAY, MAY 12, 1997

2:00 P.M.

ROOM 417 NORTH (G.A.R. HALL), STATE CAPITOL BLDG.

A G E N D A

1. Call to Order and Roll Call.
2. Consideration of the Minutes of the April 18, 1997 Meeting.
3. Review of s. 40.65 Statutory Benefits and Actuarial Information.
4. Review of Legislative Audit Bureau Study of August, 1996.
5. Review of memo to RRC dated June, 1995.
6. Subcommittee Discussion.
7. Adjournment.

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
801 West Badger Road
Madison, WI 53713**

CORRESPONDENCE MEMORANDUM

DATE: May 12, 1997

TO: Thomas Korpady, Division Administrator, Division of Insurance Services

FROM: Robert Weber, Chief Counsel

SUBJECT: Reform of the Duty Disability Program

This memorandum is intended as a discussion of some of the problems I have observed with the current duty disability program under Wis. Stat. § 40.65, with some potential reforms suggested for your consideration. This is a revised version of the memorandum I sent to the Joint Survey Committee on Retirement Systems' Duty Disability Work Group on November 23, 1993. Perhaps the following list of perceived problems with the present duty disability program and conceptual remedies may serve as a framework for discussion of possible legislation.

- A. **PROBLEM:** The present duty disability benefits are essentially the same regardless of how severe the disability may be. Over 70% of duty disability recipients are entitled full duty disability benefits (i.e., 80% of monthly salary). Applicants with wildly different degrees of disability are eligible for essentially the same duty disability benefits. Indeed, the most disabled applicants actually receive less under the duty disability program due to their eligibility for other benefits, which are offset under Wis. Stat. § 40.65 (5)(b). Under the present § 40.65 (5)(a), there are only two levels of benefits. Benefits are 80% of "monthly salary" if the participant also qualifies for either Social Security disability (OASDHI) or for a disability annuity under § 40.63 and 75% for a person who does not.¹ Ordinarily, OASDHI and § 40.63 disability benefits require "total and permanent" disability. However, a special provision in § 40.63 (4) sets a lower standard for protectives age 50 through 54 with at least 15 years of creditable service, who need only show they "can no longer efficiently and safely perform the duties required by the participant's position, and that the condition is likely to be permanent."

¹ This two-tier provision applies only to non-state employes, due to a conditional effective date in the legislation.

REMEDIES:

1. Tie duty disability benefits more directly to the degree of disability to the body as a whole as determined by the DETF based on the reports by the examining physicians, or by DILHR in eligibility cases decided by that agency.
 2. Amend § 40.65 (5)(a) to remove qualification for benefits under § 40.63(4) as a basis for full duty disability benefits at 80% of monthly salary.
- B. **PROBLEM:** Duty disability benefits are essentially lifetime income, under present law, regardless of any change in circumstances including recovery from the disability. There have been taxpayer complaints about duty disability recipients who appear to be performing tasks inconsistent with their claimed disability, including returning to work in protective occupations in other states.

REMEDIES:

1. Allow DETF to order periodic medical re-examinations.
 2. Provide for termination of benefits if the applicant ceases to be disabled.
 3. Terminate duty disability benefits upon returning to work for a different employer as a "protective" or as a law enforcement officer or fire fighter or upon working in any other occupation listed in s. 40.02 (48) or which, if performed for a participating employer, would be "protective".
- C. **PROBLEM:** The present law inadequately describes the nature and degree of the disability for which duty disability benefits are intended.

REMEDIES:

1. Redefine the necessary disability in more objective terms which focus on an inability to perform protective occupation job duties for medically demonstrable reasons, and to specifically exclude the idea that eligibility is based on the employe's subjective opinion of whether he or she can continue to do the job properly.
2. Insert description of requisite disability to include Social Security style language.

- (a) The benefits are intended for a protective occupation participant who is unable to perform the employer-required tasks of his or her employment classification due to onset of a serious and medically determinable impairment, whether physical or mental, which can reasonably be expected to result in death or to be permanent, or of indefinite and long-continued duration.
 - (b) A "medically determinable impairment" means a physical or mental impairment resulting from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.
- 3. Revise eligibility criteria under § 40.65 (4) to emphasize required severity of the impairment by repealing and recreating to eliminate the present vague "light duty" and currently incomprehensible "promotional opportunity" criteria.
- 4. Set new standards.
 - (a) The impairment must be so severe that one or more of the following is permanently, not just temporarily, true:
 - (1) The participant is terminated by the employer on the grounds that the participant is unable to perform the duties of the employment by reason of the impairment.
 - (2) The participant is medically required to terminate employment for the employer by reason of the impairment.
 - (3) The only available employment from the same employer that the participant is medically capable of performing is either:
 - A) A job with reduced annual earnings, as defined by s. 40.02 (22).
 - B) A job other than as a protective occupation participant under s. 40.02 (48m).
 - (4) The employer denied the employe a specific promotion for which the employe otherwise qualified, based only on the employe's impairment.

- D. **PROBLEM:** The present law does nothing to encourage a person qualifying for duty disability benefits to continue to work for the same employer. At least some employers are willing and able to offer employment which accommodates the employee's disability.

REMEDIES:

1. Create a new subdivision, § 40.65 (5)(b)5m, to offset "constructive earnings." Offset against duty disability benefits the "monthly salary" of a job, regardless of employment category (i.e., protective, general, etc.), offered to the participant by the same employer, which the participant is capable of performing, but which the participant declines.
 - (a) "Monthly salary" for this offset is to be initially computed and then indexed in the same manner as for computation of duty disability benefits.
 - (b) The terms of offers under this provision, including designating specific "accommodation" jobs, may be the subject of collective bargaining.
 - (c) This offset shall cease if offer of accommodating employment is withdrawn by the employer, if the participant has greater offsetting income under § 40.65 (5)(b) 6, or if the participant receives a disability or retirement annuity under any provision of this chapter except s. 40.63 (4), Stats.

- E. **PROBLEM:** There is no requirement to apply for workers compensation benefits before applying for duty disability benefits, or vice versa. Since these applications may be handled completely separately, it is theoretically possible for a person to obtain duty disability benefits although found ineligible to receive workers compensation benefits. Some employers and their third party insurers aggravate this problem by admitting a person qualifies for duty disability benefits but denying liability for workers compensation.

REMEDIES:

1. Bar eligibility for duty disability if the applicant has previously been found ineligible for basic or permanent disability (PTD or PPD) award for the same injury or disease in a workers compensation proceeding.
2. Terminate payment of duty disability benefits if, even after approval, a workers compensation proceeding determines the person is not entitled to either permanent disability (total or partial) or basic workers compensation benefits.

- (a) Require repayment of duty disability benefits already paid.
3. Compel employer to take self-consistent position with respect to existence of any permanent disability, occurrence of any injury, and whether injury or disease is work related, between workers compensation proceedings and duty disability application and appeal.
 - (1) An admission by the employer that the participant qualifies for duty disability benefits shall also be an admission for workers compensation proceedings and binding upon the employer's workers compensation carrier.
 4. Regulate compromises of workers compensation benefits to prevent the shifting of liability to the duty disability program through the expedient of compromising away all or most of the employe's workers compensation benefits.
- F. **PROBLEM:** Cost shifting by employes and employers from workers compensation insurance liability to the duty disability program are inflating the costs of the duty disability program to all protective employers. The present law provides insufficient incentives and sanctions to encourage persons to obtain the workers compensation benefits. Yet, as pointed out in the 1987 audit, it is generally impossible to qualify for duty disability benefits without also being entitled to workers compensation. A number of duty disability recipients are attempting to obtain both duty disability and workers compensation benefits for the same injury by collecting the workers compensation benefits before applying for duty disability, then arguing that the offset under the present law does not include previously received workers compensation. The Supreme Court is now reviewing the Court of Appeal decisions permitting this practice.² Other duty disability recipients compromise workers compensation claims because they have no incentive to pursue them, then argue that their workers compensation benefits have been determined and that their duty disability benefits should no longer be reduced by the 5% mandated under present law. On advice of legal counsel from the Department of Justice, the Wisconsin Retirement Board has ruled that this is a valid argument under the present Wis. Stat. § 40.65 (5)(b)3, which requires the Board to accept and offset any compromise agreement.

² See *Coutts v. Wisconsin Retirement Board. Des Jarlais v. Wis. Retirement Board*, 201 Wis.2d 178, 547 N.W.2d 821 (Ct. App. 1996) *petition for review granted* 204 Wis.2d 317, 555 N.W.2d 123 (1996).

REMEDIES:

1. In § 40.65 (5)(b)(intro.) Increase from 5% to 15% the amount of duty disability benefits to be withheld until recipient obtains a worker's compensation award.
 2. Repeal and recreate § 40.65 (5)(b)3 to provide for the offset against duty disability benefits of all workers compensation awards not already treated as earnings by the WRS, except for awards paid for an injury or disease completely unrelated to the impairment which entitles the participant to duty disability benefits. The offset shall be made regardless of when the workers compensation benefits were paid, except as follows:
 - (a) 25% of the workers compensation benefits awarded to the participant may be retained by the employe, without offset against duty disability benefits.
 - (b) Workers compensation benefits expressly identified in the award as not being payable to the employe, such as attorney fees or medical expenses, may not be offset against duty disability benefits.
 3. Workers compensation benefits already paid to the participant when DETF computes the reduction in duty disability benefits shall be treated as if they were paid as a single lump sum. The lump sum offset shall be computed as under present s. 40.65 (5)(b)3.
 4. If the participant enters into a compromise which results in dismissal of the workers compensation claim, DETF shall continue to withhold 15% of duty disability benefits while the compromise is in effect, unless DETF was a party to the compromise, or approved its terms in writing. In that case, the compromise will then be treated as a workers compensation award, above. Or, alternatively,
 5. If a workers compromise agreement does not provide for permanent partial or permanent total disability benefits, then the employe is not eligible for duty disability benefits.
- G. **PROBLEM:** A number of applicants for duty disability benefits terminated employment due to disciplinary proceedings. Use of the duty disability program by employers to "dump" undesirable employes or to guarantee income to persons guilty of misconduct is an abuse of the program.

REMEDIES:

1. Bar eligibility for duty disability benefits if the qualifying termination of employment or change in pay or job duties was associated with disciplinary action.

H. **PROBLEM:** There are, under present law, no time limits governing when an application for duty disability benefits must be made or when an appeal of the DETF decision on the application must be taken. All other DETF determinations are appealable for 90 days.

REMEDIES:

1. Since the applicant must know at time that a termination of employment, change in pay or duties or promotional denial is based solely on disability, set a time limit for applying based both on date of injury and termination of employment or protective status. The applicant must apply within both of the following two deadline periods:
 - (a) No later than 90 days after the earliest of the following events:
 - (1) Termination from employer where onset of impairment occurred.
 - (2) Ceasing to be "protective occupation participant"
 - (3) Ceasing to be "participating employe"
 - (b) Within 2 years from:
 - (1) Date of injury, if the impairment results from an injury.
 - (2) The date the participant or employe's surviving spouse knew or ought to have known of the nature of a disease-caused impairment and its relationship to the employment.
2. Appeal of denial of duty disability application to DILHR must be received by DILHR, in writing, within 90 days after the date the Department of Employee Trust Funds notice is sent to the applicant's address as shown on the application form.
3. Require injured participant to give notice to employer, under the same terms as apply to workers compensation claims under § 102.12, Stats.

- I. **PROBLEM:** The present § 40.65 (2)(b) inadequately summarizes the responsibilities of the employer, the physicians and the DETF concerning evaluation of an application for duty disability benefits.

REMEDIES:

1. Clarify law to indicate that the medical reports are for the purpose of obtaining professional medical opinions, to a reasonable degree of medical certainty, as to:
 - (a) The existence of medically determinable impairment.
 - (b) The description of the specific nature of the impairment and the associated limitations.
 - (c) The percentage of total disability to the body as a whole.
 - (d) The expected duration of the impairment.
 - (e) The cause of the impairment.
 - (f) The particular injury or occupational disease that resulted in the impairment.
 - (g) Any other medical information requested by DETF in order to make its determination of eligibility.
2. Medical reports filed with DETF in connection with an application for duty disability benefits must be recent, no more than 6 months old.
3. Clarify law to indicate the information sought from the employer includes:
 - (a) Any knowledge of reasons for termination of employment or changed pay or job duties, including disciplinary action, or other reasons besides impairment.
 - (b) Any medical reports or information known to the employer concerning the claimed disability.
 - (c) A binding admission or denial that either:
 - (1) The injury causing the impairment occurred in the performance of duty.

- (2) The disease causing the impairment results from the occupation.
 4. Allow the employer to compel an independent medical examination (IME) of the participant in order to decide whether to certify that a disease is occupational.
 5. Clearly permit the employer to veto the application. Preserve the effect of the present law by mandating that the application be denied if the employer so requests, or if the employer refuses to make the admissions necessary to qualify the participant to duty disability benefits.
 6. Provide that DETF shall make a determination on the application based on its review of the information furnished by the applicant, employer and physicians. DETF's determination of whether the information is sufficient to show the applicant qualifies under § 40.65 should continue to be appealable to DILHR.
 7. Clearly allow both the employer and participant to appeal a DETF eligibility determination to DILHR.
- J. **PROBLEM:** Some employers abuse the application process by refusing to respond to DETF requests to respond to the application, thereby delaying any resolution of the application.
- REMEDIES:**
1. Require the employer must respond to request for Employer certification by DETF within 90 days or the failure to respond is a refusal to certify, resulting in a denial.
 2. Allow applicant to recover reasonable costs from the employer if the participant prevails in an appeal of a denial based solely on the employer's refusal to respond.
- K. **PROBLEM:** Many duty disability recipients take separation benefits from the WRS, after their application for duty disability benefits is approved. This ends any entitlement to retirement and death benefits from the Wisconsin Retirement System. There are two main adverse affects. First, duty disability benefits provide no survivor or continuing annuity benefits, except for limited spousal benefits if the disability results in death. If duty disability benefits were conditioned on continuing participation in the WRS, spouses would be better protected. Second, the taking of separation benefits has skewed the experience of the WRS with respect to protective occupation participants as duty disability recipients use the Wis. Stat. § 40.65 benefits instead of retirement. Costs of the duty disability program would tend to be less if retirement benefits remained an option to the employe, since retirement benefits are offset against duty disability benefits.

REMEDIES:

1. Terminate all entitlement to duty disability benefits if the recipient ceases to be a participant for a reason other than death.

- L. **PROBLEM:** To conform to all the above suggestions, express bars to eligibility for duty disability benefits should be stated in a subsection to be created.

REMEDIES:

1. In addition to the express bars already stated above, the list should of persons who are ineligible for duty disability benefits should include:

- (a) Person no longer a participant in the WRS at time of application.
- (b) Person not a protective occupation participant at time of application.

- (1) However, a WRS participant would be deemed a protective, only for purposes of this paragraph, who terminated protective status no more than 90 days prior to the application because:

- A) Terminated by the employer due to inability to perform the job due to the impairment.
- B) Medically required to terminate employment due to the impairment.
- C) Only job available and able to perform was non-protective.
[See the 3 respective criteria for severity of disability]

- (c) Time-barred. *[See the proposed time limits under "H" on page 7.]*

- M. **PROBLEM:** The present § 40.65 (3), (5)(b)(intro.), (5)(c) and (6) state that the Wisconsin Retirement Board is responsible for determining amount of "monthly salary," amount of benefits, amount of reductions, any termination or suspension of benefits, etc. This board meets only quarterly. In actual practice, the DETF makes these determinations and provides for an appeal to the WR Board.

REMEDIES:

1. Amend current language to clearly state that the Department of Employee Trust Funds, not the Wisconsin Retirement Board, will initially make all determinations under § 40.65. Except for an appeal to DILHR concerning the eligibility for benefits, as expressly provided, a "timely appeal" of any other DETF determination may be made to the Wisconsin Retirement Board.

N. **PROBLEM:** Medical records are required to be held strictly confidential by DETF, under § 40.07(2). Even the participant has no access to these reports except by court order or after a disability appeal is begun. As a result, DETF may not now disclose physician reports concerning a duty disability application to the employer. This has resulted in unnecessary denials when employers who did not have any medical information refused to approve the application.³

REMEDIES:

1. Revise s. 40.07 (2), Stats., to allow disclosure of medical records concerning the duty disability application to the employer, after an application for duty disability benefits is received by DETF, and to DILHR and the parties, after an appeal is filed.

O. **PROBLEM:** With increasing frequency, duty disability recipients are challenging their employer's computation of the "monthly salary" from which DETF computes duty disability benefits. Under § 40.02 (41m), the "gross amount paid" excludes overtime not received on "a regular and dependable basis." The term has never been defined by statute or rule.

REMEDIES:

1. Redefine "monthly salary" as the amount of "earnings" as defined by § 40.02 (22) reportable to the Wisconsin Retirement System for the month immediately preceding the effective date for duty disability benefits.

P. **PROBLEM:** The present § 40.65 contains an outdated procedure for applications made prior to May 3, 1988. One DILHR administrative law judge even misinterpreted the

³ The Governor's Executive Budget Bill, at § 1322, contained revisions to Wis. Stat. § 40.07 (2) which would have addressed this problem. However, I understand this provision is among the policy issues which has been removed from the budget bill as currently being considered.

May 12, 1997

Page 12

statute to require a person who filed a denied and dismissed application before 1988 to follow the "old law" procedures even when filing another application after 1988.

REMEDIES:

1. Repeal s. 40.65 (2)(a), since no application may now be filed prior to May 3, 1988.
2. Amend s. 40.65 (2)(b)(intro.) to apply to all applications made on or after May 3, 1988, deleting "who first apply ...".

Q. **PROBLEM:** Under present law, some fire fighters are presumed to have an occupational disease for purposes of determining eligibility for duty disability benefits. The presumption does not expressly apply to workers compensation benefits, resulting in cases of persons receiving duty disability benefits who are not eligible for workers compensation.

REMEDIES:

1. Make presumption of occupational disease uniform with respect to both s. 40.65 and ch. 102 (workers compensation) benefits by making § 891.45 (the so-called "fire fighter's heart and lung presumption") a rebuttable presumption applicable to both 40.65 and workers compensation.