2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB239)

Received: **02/28/2012**

Received By: **rchampag**

Wanted: **Today**

Companion to LRB:

For: **Leah Vukmir (608) 266-2512**

By/Representing: **jason**

May Contact:

Drafter: **rchampag**

Subject: **Employ Pub - employee benefits**
Employ Pub - retirement

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Vukmir@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Rehired WRS Annuitants

Instructions:

Companion to ASA 2 to AB 318

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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FE Sent For:

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Today

State of Wisconsin
2011 – 2012 LEGISLATURE

LRBs0334/1
RAC:cjs:rs

LRBs 0363/1
RAC:cjs

SENATE
~~ASSEMBLY~~ SUBSTITUTE AMENDMENT ~~2~~

TO 2011 ~~ASSEMBLY~~ BILL ~~318~~ 239
SENATE

bill hist
compare
SA

~~February 21, 2012 – Offered by Representative STROEBEL.~~

Con Cat

AN ACT ***to amend*** 40.22 (2) (a), 40.22 (2m) (intro.), 40.26 (1), 40.26 (2) (intro.), 40.26 (2) (c) and 40.26 (5) (intro.); and ***to create*** 40.26 (1m) and 40.26 (2) (d) of the statutes; **relating to:** post–retirement employment of annuitants under the Wisconsin Retirement System, participation status under the Wisconsin Retirement System, and granting rule–making authority.

Analysis by the Legislative Reference Bureau

This substitute amendment makes all of the following changes with respect to the receipt of an annuity under the Wisconsin Retirement System (WRS), the termination of an annuity under certain conditions, and participation status under the WRS:

Mandatory period of separation from covered employment

Under current law, a WRS participant who has applied to receive a retirement annuity must wait at least 30 days between terminating covered employment with a WRS employer and returning to covered employment again as a participating employee. If the participant does not wait the 30–day period, and is rehired before the expiration of the 30–day period, the participant is not eligible to receive a WRS retirement annuity. The substitute amendment provides that the participant must remain separated from covered employment under the WRS for at least 75 days in

order to be an eligible rehired annuitant. This provision first applies to a WRS participating employee who terminates covered employment under the WRS on the substitute amendment's effective date.

Termination of annuity for rehired annuitants

Currently, when a WRS participant terminates employment and receives an annuity he or she may return to covered employment and either terminate the annuity and again become a WRS participating employee or, instead, continue to receive the annuity, as well as wages from covered employment. If a participant does not terminate the annuity, the participant may not be a participating employee in the WRS and, in the case of state employment, is not eligible for group insurance benefits provided to participating employees, and may not use any of his or her employment service as a rehired annuitant for any WRS purposes. If the participant terminates the annuity, the participant returns to participating employee status and is eligible for all group insurance benefits provided other participating employees, as well as is able to accumulate additional years of creditable service under the WRS for the additional period of covered employment.

This substitute amendment provides that if a WRS participant who is receiving an annuity, or a disability annuitant who has attained his or her normal retirement date, is appointed to a position in covered employment in which he or she is expected to work at least one–half of what is considered full–time employment by the DETF, as determined by rule, the participant's annuity must be terminated and no annuity payment is payable until after the participant again terminates covered employment. This provision first applies to a WRS participating employee who terminates covered employment under the WRS on the substitute amendment's effective date.

Under the substitute amendment, even though the participant again becomes a WRS participating employee after terminating his or her annuity, and becomes eligible to receive group insurance benefits provided to other participating employees, the participant may not accumulate additional years of creditable service under the WRS for the additional period of covered employment. Also, all WRS employee required contributions that are paid by the participant during the period in which the annuity was terminated, as well as any interest on those contributions, must be paid to the participant as a lump sum upon the reestablishment of the terminated annuity.

Termination of annuity for annuitants providing employee services

The substitute amendment also provides that if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, enters into a contract to provide employee services with a participating employer after the substitute amendment's effective date, and he or she is expected to work at least one–half of what is considered full–time employment by DETF, as determined by rule, the participant's retirement annuity must be terminated and no annuity payment is payable until after the participant no longer provides employee services under the contract. This provision first applies to a WRS participating employee who terminates covered employment under the WRS on the substitute amendment's effective date.

Two-thirds employment requirement for participation in WRS

Finally, 2011 Wisconsin Act 32 increased the number of hours that an employee must work in order to become a participating employee in the WRS, from one-third of what is considered full-time employment to two-thirds of what is considered full-time employment, as determined by DETF by rule. Under 2011 Wisconsin Act 32, this change in law did not apply to those employees who were first *hired* by a WRS employer before July 1, 2011, regardless of whether they were participating employees before that date. This substitute amendment provides that in order to be exempt from this change in law, employees must have been *participating employees* before July 1, 2011.

Because this substitute amendment relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

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

1 **SECTION 1.** 40.22 (2) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 40.22 **(2)** (a) Except as provided in sub. (2m), the employee was ~~initially~~
4 ~~employed by a participating employer~~ a participating employee before July 1, 2011,
5 and is not expected to work at least one-third of what is considered full-time
6 employment by the department, as determined by rule.

7 **SECTION 2.** 40.22 (2m) (intro.) of the statutes, as affected by 2011 Wisconsin Act
8 32, is amended to read:

9 40.22 **(2m)** (intro.) An employee who was ~~initially employed by a participating~~
10 ~~employer~~ a participating employee before July 1, 2011, who is not expected to work
11 at least one-third of what is considered full-time employment by the department,
12 as determined by rule, and who is not otherwise excluded under sub. (2) from
13 becoming a participating employee shall become a participating employee if he or she
14 is subsequently employed by the state agency or other participating employer for
15 either of the following periods:

1 **SECTION 3.** 40.26 (1) of the statutes is amended to read:

2 40.26 **(1)** Except as provided in sub. (1m) and ss. 40.05 (2) (g) 2. and 40.23 (1)
3 (am), if a participant receiving a retirement annuity, or a disability annuitant who
4 has attained his or her normal retirement date, receives earnings that are subject
5 to s. 40.05 (1) or that would be subject to s. 40.05 (1) except for the exclusion specified
6 in s. 40.22 (2) (L), the annuity shall be terminated and no annuity payment shall be
7 payable after the month in which the participant files with the department a written
8 election to be included within the provisions of the Wisconsin retirement system as
9 a participating employee.

10 **SECTION 4.** 40.26 (1m) of the statutes is created to read:

11 40.26 **(1m)** (a) If a participant receiving a retirement annuity, or a disability
12 annuitant who has attained his or her normal retirement date, is employed in a
13 position in covered employment in which he or she is expected to work at least
14 one–half of what is considered full–time employment by the department, as
15 determined by rule, the participant's annuity shall be terminated and no annuity
16 payment shall be payable until after the participant terminates covered
17 employment.

18 (b) If a participant receiving a retirement annuity, or a disability annuitant
19 who has attained his or her normal retirement date, enters into a contract to provide
20 employee services with a participating employer and he or she is expected to work
21 at least one–half of what is considered full–time employment by the department, as
22 determined by rule, the participant's annuity shall be terminated and no annuity
23 payment shall be payable until after the participant no longer provides employee
24 services under the contract.

25 **SECTION 5.** 40.26 (2) (intro.) of the statutes is amended to read:

40.26 **(2)** (intro.) Upon termination of an annuity under sub. (1) or (1m), the retirement account of the participant whose annuity is so terminated shall be reestablished on the following basis:

SECTION 6. 40.26 (2) (c) of the statutes is amended to read:

40.26 **(2)** (c) Except as provided in pars. (a) ~~and~~, (b), and (d), the retirement account shall be reestablished as if the terminated annuity had never been effective, including crediting of interest and of any contributions made and creditable service earned during the period the annuity was in force.

SECTION 7. 40.26 (2) (d) of the statutes is created to read:

40.26 **(2)** (d) 1. Notwithstanding s. 40.02 (17) and (33), a participant who terminates an annuity under sub. (1m) may not receive any creditable service during the period in which the annuity was terminated, nor may any earnings received during the period in which the annuity was terminated be used for purposes of recalculating the participant's final average earnings.

2. All employee required contributions under s. 40.05 (1) (a) that are paid by a participant who terminates an annuity under sub. (1m), during the period in which the annuity was terminated, as well as any interest on those contributions, shall be paid to the participant as a lump sum upon the reestablishment of the terminated annuity.

SECTION 8. 40.26 (5) (intro.) of the statutes is amended to read:

40.26 **(5)** (intro.) If a participant applies for an annuity or lump sum payment during the period in which less than ~~30~~ 75 days have elapsed between the termination of employment with a participating employer and becoming a participating employee with any participating employer, all of the following shall apply:

1 **SECTION 9. Nonstatutory provisions.**

2 (1) PROMULGATION OF EMERGENCY RULES FOR REENTRY INTO SERVICE. The
3 department of employee trust funds may use the procedure under section 227.24 of
4 the statutes to promulgate rules under section 40.26 (1m) of the statutes, as created
5 by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency
6 rules promulgated under this subsection remain in effect until January 1, 2013, or
7 the date on which permanent rules take effect, whichever is sooner.
8 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not
9 required to provide evidence that promulgating a rule under this subsection as an
10 emergency rule is necessary for the preservation of the public peace, health, safety,
11 or welfare and is not required to provide a finding of emergency for a rule
12 promulgated under this subsection.

13 **SECTION 10. Initial applicability.**

14 (1) The treatment of section 40.26 (1), (1m), (2) (intro.), (c), and (d), and (5)
15 (intro.) of the statutes first applies to participating employees under the Wisconsin
16 Retirement System who terminate covered employment under the Wisconsin
17 Retirement System on the effective date of this subsection.

18 **(END)**