



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3202/1
RAC:wlj:rs

2011 ASSEMBLY BILL 539

February 7, 2012 - Introduced by Representatives STRACHOTA, SPANBAUER, A. OTT, BROOKS and THIESFELDT. Referred to Committee on Colleges and Universities. Referred to Joint Survey Committee on Retirement Systems.

1 **AN ACT to amend** 40.02 (25) (b) 6m. a., 40.02 (49) and 40.05 (4) (b); and **to create**
2 36.24, 40.02 (25) (a) 7., 40.02 (25) (b) 12. and 40.22 (2) (n) of the statutes;
3 **relating to:** authorizing the Board of Regents of the University of Wisconsin
4 System to establish an optional retirement system for its employees.

Analysis by the Legislative Reference Bureau

This bill authorizes the Board of Regents of the University of Wisconsin (UW) System (board) to establish an optional retirement system for UW employees initially hired on or after January 1, 2012, who elect to participate in the optional retirement system. The optional retirement system must be established as a governmental plan and as a qualified plan for federal income tax purposes and must be so maintained and administered. The bill specifically provides that any employer contributions paid by the board during any year on behalf of a UW employee may not exceed the employer contributions paid by a participating employer under the Wisconsin Retirement System (WRS) in that year for a similarly situated employee.

Under the bill, the board must establish a process for employees to elect to participate in the optional retirement system and must determine all benefits for employees who elect to participate in the optional retirement system. The bill also provides that the board may delegate any powers and duties that the board considers necessary or desirable for the purpose of administering the optional retirement system.

The bill further provides that UW employees who elect to participate in the optional retirement system may not, at the same time, also be participating

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employees in the WRS. Moreover, an employee who participates in the optional retirement system may not subsequently become a participating employee in the WRS during the period of his or her employment with the UW System. Finally, it should be noted, the bill does not affect any current law insurance benefit or coverage for employees in either the WRS or the optional retirement system.

Because this bill 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.

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

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

1 **SECTION 1.** 36.24 of the statutes is created to read:

2 **36.24 Optional retirement system. (1)** In this section:

3 (a) "Internal Revenue Code" means the Internal Revenue Code, as defined for
4 the current taxable year under s. 71.01 (6), and applicable regulations adopted under
5 the Internal Revenue Code, including temporary regulations.

6 (b) "Participating employee in the Wisconsin retirement system" means a
7 participating employee, as defined in s. 40.02 (46).

8 (c) "Wisconsin retirement system" means the Wisconsin retirement system
9 established under ch. 40.

10 **(2)** (a) The board may establish an optional retirement system for employees
11 of the system initially hired on or after January 1, 2012, who elect to participate in
12 the optional retirement system.

13 (b) The optional retirement system shall be established as a governmental plan
14 and as a qualified plan for federal income tax purposes under section 401 (a) or 403
15 (a) or (b) of the Internal Revenue Code and shall be so maintained and administered.

16 (c) No benefit plan authorized under the optional retirement system may be
17 administered in a manner that violates an Internal Revenue Code provision that

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1 authorizes or regulates that benefit plan or that would cause an otherwise
2 tax-exempt benefit to become taxable under the Internal Revenue Code.

3 (d) Employer contributions paid by the board during any year on behalf of an
4 employee, calculated as a percentage of earnings, may not exceed the employer
5 contributions paid by a participating employer, as defined in s. 40.02 (47), under the
6 Wisconsin retirement system in that year for a similarly situated employee.

7 (3) The board shall establish a process for employees to elect to participate in
8 the optional retirement system and shall determine all benefits for faculty and
9 academic staff members who elect to participate in the optional retirement system.
10 The board may delegate any powers and duties that the board considers necessary
11 or desirable for the purpose of administering the optional retirement system.

12 (4) Employees who elect to participate in the optional retirement system may
13 not be participating employees in the Wisconsin retirement system. An employee
14 who participates in the optional retirement system may not subsequently become a
15 participating employee in the Wisconsin retirement system during the period of his
16 or her employment with the University of Wisconsin System.

17 (5) The board may offer long-term disability insurance for all employees who
18 elect to participate in the optional retirement system. Employees shall pay the full
19 premium cost of such insurance.

20 (6) For employees who elect to participate in the optional retirement system, any
21 required employee contributions shall be made by a reduction in salary and, for tax
22 purposes, shall be considered employer contributions under section 414 (h) (2) of the
23 Internal Revenue Code.

24 (7) Under the optional retirement system, the board shall enter into contracts
25 with one or more companies to provide retirement annuities to employees who elect

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1 to participate in the optional retirement system. The contract shall provide for
2 retirement annuities that are fixed or variable or a combination thereof. In
3 determining the company with which the board shall enter into a contract, the board
4 shall consider all of the following:

5 (a) The portability of the contracts offered by the company, based on the number
6 of states in which the company provides contracts under similar retirement systems.

7 (b) The efficacy of the contracts in the recruitment and retention of employees
8 of the system.

9 (c) The nature and extent of the rights and benefits provided by the contracts
10 for employees and their beneficiaries.

11 (d) The relationship of the rights and benefits to the amount of contributions
12 made by or on behalf of the employee.

13 (e) The suitability of the rights and benefits to the needs and interests of
14 employees and the system and its institutions.

15 (f) The financial stability and ability of the company to provide the rights and
16 benefits under the contracts.

17 **SECTION 2.** 40.02 (25) (a) 7. of the statutes is created to read:

18 40.02 (25) (a) 7. Any employee who has been participating in the optional
19 retirement system under s. 36.24 for a period of at least 6 months prior to attainment
20 of age 70, not including any period of leave of absence without pay, or any employee
21 who immediately prior to participating in the optional retirement system had been
22 participating under the Wisconsin retirement system for a period of at least 6
23 months, but only with respect to group insurance other than long-term disability
24 insurance.

25 **SECTION 3.** 40.02 (25) (b) 6m. a. of the statutes is amended to read:

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1 40.02 (25) (b) 6m. a. A retired employee of the state who is receiving a
2 retirement annuity under this chapter or s. 36.24 or has received a lump sum
3 payment under s. 40.25 (1).

4 **SECTION 4.** 40.02 (25) (b) 12. of the statutes is created to read:

5 40.02 (25) (b) 12. An employee who participates in the optional retirement
6 system under s. 36.24, notwithstanding par. (a) 7.

7 **SECTION 5.** 40.02 (49) of the statutes is amended to read:

8 40.02 (49) “Retired employee” means a former insured employee who is not a
9 participating employee and who is retired on an immediate or disability annuity
10 under this chapter or s. 36.24 or who receives a lump sum payment under s. 40.25
11 (1) which would have been an immediate annuity if paid as an annuity or who is an
12 eligible employee under sub. (25) (b) 6., 6e., or 6g.

13 **SECTION 6.** 40.05 (4) (b) of the statutes, as affected by 2011 Wisconsin Acts 10
14 and 32, is amended to read:

15 40.05 (4) (b) Except as provided under pars. (bc) and (bp), accumulated unused
16 sick leave under ss. 13.121 (4), 36.30, 230.35 (2), 233.10, 238.04 (8), and 757.02 (5)
17 and subch. V of ch. 111 of any eligible employee shall, at the time of death, upon
18 qualifying for an immediate annuity under this chapter or s. 36.24 or for a lump sum
19 payment under s. 40.25 (1) or upon termination of creditable service and qualifying
20 as an eligible employee under s. 40.02 (25) (b) 6. or 10., be converted, at the employee’s
21 highest basic pay rate he or she received while employed by the state, to credits for
22 payment of health insurance premiums on behalf of the employee or the employee’s
23 surviving insured dependents. Any supplemental compensation that is paid to a
24 state employee who is classified under the state classified civil service as a teacher,
25 teacher supervisor, or education director for the employee’s completion of

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1 educational courses that have been approved by the employee's employer is
2 considered as part of the employee's basic pay for purposes of this paragraph. The
3 full premium for any eligible employee who is insured at the time of retirement, or
4 for the surviving insured dependents of an eligible employee who is deceased, shall
5 be deducted from the credits until the credits are exhausted and paid from the
6 account under s. 40.04 (10), and then deducted from annuity payments, if the
7 annuity is sufficient. The department shall provide for the direct payment of
8 premiums by the insured to the insurer if the premium to be withheld exceeds the
9 annuity payment. Upon conversion of an employee's unused sick leave to credits
10 under this paragraph or par. (bf), the employee or, if the employee is deceased, the
11 employee's surviving insured dependents may initiate deductions from those credits
12 or may elect to delay initiation of deductions from those credits, but only if the
13 employee or surviving insured dependents are covered by a comparable health
14 insurance plan or policy during the period beginning on the date of the conversion
15 and ending on the date on which the employee or surviving insured dependents later
16 elect to initiate deductions from those credits. If an employee or an employee's
17 surviving insured dependents elect to delay initiation of deductions from those
18 credits, an employee or the employee's surviving insured dependents may only later
19 elect to initiate deductions from those credits during the annual enrollment period
20 under par. (be). A health insurance plan or policy is considered comparable if it
21 provides hospital and medical benefits that are substantially equivalent to the
22 standard health insurance plan established under s. 40.52 (1).

23 **SECTION 7.** 40.22 (2) (n) of the statutes is created to read:

