

CHAPTER 40

PUBLIC EMPLOYE TRUST FUND

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SUBCHAPTER I

TRUST PURPOSES AND
ADMINISTRATION

40.01 Creation and purpose. (1) CREATION. A "public employe trust fund" is created to aid public employes in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident, thereby promoting economy and efficiency in public service by facilitating the attraction and retention of competent employes, by enhancing employe morale, by providing for the orderly and humane departure from service of employes no longer able to perform their duties effectively, by establishing equitable benefit standards throughout public employment, by achieving administrative expense savings and by facilitating transfer of personnel between public employes.

(2) PURPOSE. The public employe trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment at the lowest possible cost of the benefit commitments

to participants, as set forth in this chapter, and shall not be used for any other purpose. Revenues collected for and balances in the accounts of a specific benefit plan shall be used only for the purposes of that benefit plan, including amounts allocated under s. 40.04 (2), and shall not be used for the purposes of any other benefit plan. Each member of the employe trust funds board shall be a trustee of the fund and the fund shall be administered by the department of employe trust funds. All statutes relating to the fund shall be construed liberally in furtherance of the purposes set forth in this section.

(3) COMPATIBILITY OF TRUSTEE RESPONSIBILITIES. Membership on the employe trust funds board, group insurance board, Wisconsin retirement board and the teachers retirement board shall not be incompatible with any other public office. The board members and the employes of the department shall not be deemed to have a conflict of interest in carrying out their responsibilities and duties in administering this chapter, or taking other appropriate actions necessary to achieve the purposes of this chapter, solely by reason of their being eligible for benefits under the benefit plans provided under this chapter. However, any board member or employe of the department is expressly prohib-

ited from participating in decisions directly related to a specific benefit, credit, claim or application of the person and from participating in negotiations or decisions on the selection of actuarial, medical, legal, insurance or other independent contractors if the board member or employe of the department has a direct or indirect financial interest in or is an officer or employe or is otherwise associated with the independent contractor.

History: 1981 c. 96.

40.02 Definitions. In this chapter, unless the context requires otherwise:

(1) "Accumulation" means the total employe required contributions or employer required contributions or additional contributions as increased or decreased by application of investment earnings at each year's effective rate.

(2) "Additional contribution" means any contribution made by or on behalf of a participant to the retirement system other than employe and employer required contributions.

(3) "Annual earnings period" means the calendar year except for teachers it means the period beginning on the first day of a school year and ending on the day prior to the beginning of the next school year, as determined by the employer in accordance with rules of the department.

(4) "Annuitant" means a person receiving a retirement annuity, beneficiary annuity or a disability annuity from the Wisconsin retirement system, including a person whose disability annuity has been suspended. For group life insurance purposes, "annuitant" also means annuitants of retirement systems other than the Wisconsin retirement system as determined by the group insurance board for any employer.

(5) "Annuity" means a series of monthly payments payable during the life of the annuitant or during a specific period. The first instalment of each annuity from the Wisconsin retirement system shall be payable on the first day of the calendar month following the annuity effective date as specified in this chapter and shall be the full monthly amount or, if less, the full monthly amount multiplied by a percentage equal to 3.6% times the number of days from the effective date of the annuity to the end of the month in which the annuity is effective, counting both the effective date and the last day of the month. Succeeding instalments shall be payable as of the first day of each succeeding calendar month. The last payment shall be the payment payable in the calendar month in which the annuitant dies, except as otherwise specifically provided in this chapter. In the case of the death of an annuitant prior to the expiration of any

guaranteed number of payments, if the first instalment was less than the full monthly amount, an additional payment shall be paid to the beneficiary, in the month after the end of the guarantee period, equal to the then monthly amount payable times the difference between 100% and the percent applied in determining the first monthly instalment.

(6) "Assumed annuitant rate" means a rate of 5%, unless the board determines, upon recommendation of the actuary, that a lower rate can be implemented without increasing total employer required contributions for current and prior service combined, expressed as a percentage of total covered salary. The assumed annuitant rate shall be used for calculating the initial cost, and making actuarial valuations of, annuities in force and the amount of lump sum death benefits payable from the portion of an annuity based on additional deposits.

(7) "Assumed rate" means the probable average effective rate expected to be earned for the fixed annuity division on a long-term basis. The assumed rate shall be redetermined at the end of each 3rd calendar year beginning with the calendar year following January 1, 1982, by averaging the effective rates in the preceding 10 calendar years, disregarding fractions of less than one percent in the average. For years in which separate effective rates were determined for the state teachers retirement system, the Wisconsin retirement fund and the Milwaukee teachers retirement fund, the effective rates of the Wisconsin retirement fund shall be used. The assumed rate for a calendar year shall be used for all calculations of required contributions and reserves for participants and the amount of any lump sum benefit, except it shall not be used for any purpose for which the assumed annuitant rate is to be used under sub. (6).

(8) (a) "Beneficiary" means:

1. The person, or a trust in which the person has a beneficial interest, so designated by a participant or insured employe or annuitant in the last written designation of beneficiary on file with, and in the form approved by, the department at the time of death. A written designation of beneficiary for a specified benefit plan applies only for determining beneficiaries under that specified benefit plan.

2. In the absence of a written designation of beneficiary, or if all beneficiaries so designated die before filing with the department an application for any death benefit payable, the person determined in the following sequence: group 1, widow or widower; group 2, children if at least one child survives the participant, employe or annuitant, in which event the share of any

deceased child shall be payable to the surviving spouse of the child or to the surviving children of the child if there is no spouse, or otherwise to the other eligible children in this group; group 3, grandchild; group 4, parent; group 5, brother and sister. No payment may be made to a person included in any group if there is a living person in any preceding group.

3. The estate of the participant, employe or annuitant, if there is no written designation of beneficiary and no beneficiary determined under subd. 2 or par. (b) or if so specified in the last written designation of beneficiary filed prior to time of death.

(b) "Beneficiary" does not include a person who dies before filing with the department an application for any death benefit payable to the person except as otherwise provided under group 2, under par. (a) 2. If a person dies after filing a beneficiary application but before the date on which the benefit check is issued or funds are otherwise transferred, any benefit payable shall be paid in accord with the written designation of beneficiary, if any, filed with the department in connection with the application or, if none, in accord with the last designation previously filed by the person, or otherwise to the person's estate.

(9) "Beneficiary annuity" means any death benefit which is paid as an annuity.

(10) "Benefit plan" includes the Wisconsin retirement system, OASDHI, group health insurance, group income continuation insurance, group life insurance or any other insurance plan established under this chapter, regardless of whether each type of insurance is provided through one or multiple contracts or provides different levels of benefits to different employes.

(11) "Board" means the employe trust funds board.

(12) "Child" means natural children and legally adopted children.

(13) "Coverage group" has the meaning given that term by federal regulations.

(14) "Creditable current service" means the creditable service granted for service performed and for which a participating employe receives earnings from a participating employer after the effective date of participation for that employer.

(15) (a) "Creditable military service" means active service in the U.S. army, including the WACS; the U.S. navy, including the WAVES; the U.S. air force, including the WAFS; the U.S. marine corps, including the WMS; or the U.S. coast guard, including the SPARS, based on the total period of service in the armed forces, provided:

1. The participant enlisted or was ordered or inducted into active service in the U.S. armed forces;

2. The participant left the employment of a participating employer to enter the U.S. armed forces;

3. The participant returns to the employment of the employer whose employment the participant left to enter the U.S. armed forces within 180 days of release or discharge from the armed forces, or within 180 days of release from hospitalization because of injury or sickness resulting from service in the armed forces;

4. The period of service in the U.S. armed forces is not more than 4 years, unless involuntarily extended for a longer period;

5. The participant was discharged from the U.S. armed forces under conditions other than dishonorable; and

6. The participant upon return from service in the U.S. armed forces furnishes evidence required to establish the participant's rights under this chapter.

(b) The creditable military service under par. (a) shall be the same type, as set forth in s. 40.23 (2) (b), as the participant was receiving prior to entry into the U.S. armed forces.

(c) Notwithstanding sub. (17) (intro.) and any other law, any person who is credited with 20 or more years of creditable service, not counting any previously granted creditable military service, may receive creditable military service for not more than 4 years of active service which meets the standards under par. (a) 5, provided:

1. This paragraph applies only to active military service served prior to January 1, 1974.

2. Any creditable military service otherwise granted shall be included in determining the maximum 4 years to be granted under this paragraph.

3. Creditable military service under this paragraph shall be allocated in proportion to the amount of the participant's creditable service for each of the types of creditable service set forth in s. 40.23 (2) (b) at the time of retirement on the date the participant attains 20 years of creditable service.

4. This paragraph shall not apply with respect to any active service if the active service is used for the purpose of establishing entitlement to, or the amount of, any benefit, other than a disability benefit, to be paid by any federal retirement program other than OASDHI.

5. The participant's creditable service terminates on or after January 1, 1982.

(16) "Creditable prior service" means all previous service for a participating employer of a person who became a participating employe on the effective date of participation for that employer if the service or employment conformed to the requirements for granting creditable current service, but no credit shall be granted for

any period of service which was previously covered by a retirement system.

(17) "Creditable service" means the creditable current and prior service, expressed in years and fractions of a year to the nearest one-hundredth, for which a participating employe receives earnings and for which contributions have been made as required by s. 40.05 (1) and (2) and creditable military service and service credited under s. 40.29, expressed in years and fractions of years to the nearest one-hundredth. How much service in any annual earnings period is the full-time equivalent of one year of creditable service shall be determined by rule by the department and the rules may provide for differing equivalents for different types of employment. The amount of creditable service for periods prior to January 1, 1982, shall be the amount for which the participant was eligible under the applicable laws and rules in effect prior to January 1, 1982. No more than one year of creditable service shall be granted for any annual earnings period. Creditable service is determined in the following manner for the following persons:

(a) Each person holding the offices of governor, lieutenant governor, secretary of state, state treasurer, representative to the assembly, senator, chief clerk and sergeant at arms of the assembly and chief clerk and sergeant at arms of the senate shall receive creditable service on a full-time basis for the period during which the office is held.

(b) Each participating employe in the Wisconsin retirement system whose creditable service terminates on or after January 1, 1982, who was previously a participant in the Wisconsin retirement fund and who has not received a separation benefit may receive creditable service equal to the period of service during any qualifying period under s. 41.02 (6) (c), 1969 stats., s. 66.901 (4) (d), 1967 stats., or under any predecessor statute, but not to exceed 6 months. The additional creditable service shall be granted upon application by the employe if the applicant pays to the department a lump sum payment equal to 5% of one-twelfth of the employe's highest earnings in a single annual earnings period multiplied by the number of months of creditable service granted under this paragraph. That amount shall be credited and treated as an employe required contribution for all purposes of the Wisconsin retirement system.

(c) An executive participating employe holding a position designated under s. 20.923 (4), (8) or (9) may not receive creditable service for service in that position on and after the first day of the 4th month commencing after the executive participating employe attains the age of 62 years.

(d) 1. Notwithstanding s. 40.19 (3), upon application to the department each participant who has been a protective occupation participant after July 1, 1969, if the participant has been employed as a protective occupation participant for the 12 months immediately preceding retirement, shall be granted creditable service as a protective occupation participant for all service prior to July 1, 1969, which was performed in a position designated under sub. (48) as a position in which an individual would be a protective occupation participant.

2. Any benefits authorized under subd. 1 for any person who terminated as a participating employe prior to April 27, 1982, which are in excess of the amounts otherwise payable to the person under other provisions of this chapter, shall be paid from the appropriation under s. 20.515 (1) (a).

(18) "Death benefit" means any amount payable to a beneficiary under s. 40.73.

(18g) "Deferred compensation plan" means a plan which is in accordance with section 457 of the federal internal revenue code, under which an employer executes an agreement by which an employe voluntarily agrees to defer a part of gross compensation for payment at a later date. Deferred compensation plan does not include annuity plans specified under section 403 (b) of the federal internal revenue code.

(18s) "Deferred compensation plan provider" means a person who provides administrative or investment services related to deferred compensation plans.

(19) "Department" means the department of employe trust funds.

(20) "Dependent" means the spouse, minor child, including stepchildren of the current marriage dependent on the employe for support and maintenance, or child of any age, including stepchildren of the current marriage, if handicapped to an extent requiring continued dependence. For group insurance purposes only, the department may adopt by rule a different definition of "dependent" than the one otherwise provided in this subsection for each group insurance plan.

(21) "Disability annuity" means any annuity payable under s. 40.63 or 66.191.

(22) "Earnings":

(a) Except as provided in pars. (b), (c), (d) and (e), means the gross amount paid to an employe as salary or wages, including amounts provided through deferred compensation or tax shelter agreements, for personal services rendered to or for an employer, or which would have been available for payment to the employe except for the employe's election that part or all of the amount be used for other purposes and also

includes the money value, as determined by the employer, of any board, lodging, fuel, laundry and other allowances provided for the employe in lieu of money. For purposes of this paragraph, the gross amount shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, charitable contributions or similar amounts and shall be considered received as of the date when the earnings would normally be payable by the employer. For reporting and computation purposes, fractions of a dollar shall be disregarded in determining annual earnings.

(b) Does not mean payments made for reasons other than for personal services rendered to or for an employer, including, but not limited to:

1. Uniforms purchased directly by the employer.

2. Employer contributions for insurance and retirement.

3. Unemployment compensation benefits.

4. Payments contingent on the employe providing the employer with or assisting the employer in acquiring tangible or intangible property of the employe.

5. Payments contingent on the employe having attained an age which, if increased by 5 years, is greater than what the employe's age would be on the employe's normal retirement date.

6. Lump sum payments at termination for accumulated vacation, sick leave or compensatory time, except that for disability purposes any lump sum payments shall be treated as a continuation of the employe's earnings and service at the employe's then current rate of pay. This subdivision does not exclude payments which are broadly applicable to the employes of the employer regardless of age, length of service or likelihood of employment termination.

7. Payments contingent on the employe having terminated covered employment or having died.

8. Payments contingent on the employe terminating employment at a specified time in the future including payments to secure voluntary release of an unexpired contract of employment.

9. Payments for damages, attorney fees, interest or penalties paid under court judgment or by compromise settlement to satisfy a grievance or wage claim even though the amount of damages or penalties might be based on previous salary levels. However, where the court order or compromise settlement directs that salary be paid for a specified period of time, the payment shall be considered covered earnings applicable to the period specified in the order or settlement, and if the order or settlement provides that the salary be reduced by amounts earned from other

sources, then the covered earnings shall be determined prior to the reduction.

10. Payments made in the last 5 years of employment which are the result of a change in the method of computing the base compensation of an employe, unless the change in method for computing the base compensation is a permanent change and is broadly applicable to the employes of that employer or unless the change is the result of a significant change in the nature of the duties and activities expected of the employe.

11. Payment in lieu of fringe benefits normally paid for or provided by the employer but which can be paid to the employe at the employe's option.

12. For any employer, earnings paid to an employe directly by any other unit of government except county supplements to judges under ss. 20.923 (3m), 753.016 (2), 753.071 and 753.075, 1977 stats., are earnings if the supplemental payments were subject to subch. I of ch. 41, 1977 stats.

14. Any other type of payment determined by the department by rule to be a distortion of the normal progression patterns on which an individual's benefits should be based.

(c) For OASDHI purposes, has the meaning specified for wages under federal regulations.

(d) For Wisconsin retirement system purposes only, for a state elected official who is prohibited by law from receiving an increase in compensation during the official's term of office, means the compensation which would have been payable to the participant if the participant had not been prohibited by law from receiving an increase in compensation during his or her term of office.

(e) Except for OASDHI purposes, at the employer's discretion, means compensation deemed to have been paid for services deemed to have been rendered during periods of leaves of absence without pay, at the employe's rate of pay prior to the leave, provided contributions and premiums on the deemed earnings are paid as required under s. 40.05. Any action taken under this paragraph that applies to state employes shall be taken pursuant to a collective bargaining agreement under subch. V of ch. 111 or s. 230.12.

(23) "Effective rate" means:

(a) For the fixed annuity division, the rate, disregarding fractions less than one-tenth of one percent, from the experience of the calendar year or part of the calendar year which, after making provision for any necessary reserves, will distribute the remaining investment earnings from assets of the fixed annuity division for the year, less the administrative costs of the fixed annuity division for the year, to the fixed annu-

ity balances at the beginning of the calendar year in the accounts of the individual employes, the employer accumulation account and the annuity reserve.

(b) For the variable annuity division, the rate, disregarding fractions less than one percent, which will distribute the net gain or loss of the variable annuity division to the respective variable annuity balances and reserves using the same procedure as provided in par. (a) for the fixed annuity division.

(24) "Elected official", except as otherwise provided in sub. (48) and s. 40.90, means a participating employe who is:

(a) A supreme court justice, court of appeals judge, circuit judge or state, county or municipal official elected by vote of the people; or

(b) Appointed as provided by statute to fill a vacancy in a position specified in par. (a).

(25) "Eligible employe" means:

(a) For the purpose of any group insurance:

1. Any participating state employe who has been participating under the Wisconsin retirement system for a period of at least 6 months prior to attainment of age 70 not including any period of leave of absence without pay; or

2. Any state employe who is a member or employe of the legislature, a state constitutional officer, a justice of the supreme court, court of appeals judge, a circuit judge or the chief clerk or sergeant at arms of the senate or assembly; or

3. The blind employes of the Wisconsin workshop for the blind authorized under s. 47.06 as of the beginning of the calendar month following completion of 1,000 hours of service. Persons employed by an employer who are blind when hired shall not be eligible for life insurance premium waiver because of any disability which is directly or indirectly attributed to blindness and may convert life insurance coverage only once under the contract; or

4. Only a person who has not attained age 70 at the time of becoming initially eligible for the group insurance coverage provided under this chapter; but this subdivision does not exclude any participant from participation in the group health insurance plan nor does it exclude from participation in the group life insurance plan any employe who is initially eligible on the employer's effective date of participation.

5. Any state employe who has been participating under the Wisconsin retirement system for a period of at least 6 months prior to attaining age 70 not including any period of leave of absence without pay and who is on union service leave except the cost for premium payments shall be entirely the responsibility of the state employe on union service leave.

(b) For the purpose of group health insurance coverage:

1. Any teacher who is employed by the university for an expected duration of not less than 6 months on at least a one-third full-time employment;

2. Any person employed as a graduate assistant and other employes-in-training as are designated by the board of regents of the university, who are employed on at least a one-third full-time basis;

3. The surviving spouse of an employe, or of a retired employe, who is currently covered by health insurance at the time of death of the employe or retired employe. The spouse shall have the same right to health insurance coverage as the deceased employe or retired employe, but without state contribution, under rules adopted by the secretary;

4. Any insured employe who is retired on an immediate or disability annuity, or who receives a lump sum payment under s. 40.25 (1) which would have been an immediate annuity if paid as an annuity, if the employe meets all of the requirements for an immediate annuity including filing of application whether or not final administrative action has been taken;

5. Any participating state employe under the Wisconsin retirement system, notwithstanding par. (a) 1;

6. A participating state employe who terminates creditable service:

a. After attaining 20 years of creditable service; and

b. Who is eligible for an immediate annuity but defers application; or

7. Any other employe of the state for whom coverage is authorized under a collective bargaining agreement under subch. V of ch. 111 or under s. 230.12.

(c) For the purpose of group life insurance coverage, for participating employes and employes subject to s. 40.19 (4) of any employer, other than the state, which has acted under s. 40.70 (1) (a) to make group life insurance available to its employes the same as provided under par. (a) 1 and 3 for state employes.

(26) "Employe" means any person who receives earnings as payment for personal services rendered for the benefit of any employer including officers of the employer. An employe is deemed to have separated from the service of an employer at the end of the day on which the employe last performed services for the employer, or, if later, the day on which the employe-employer relationship is terminated because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence. A person shall not be considered an employe if a person:

(a) Is employed under a contract involving the furnishing of more than personal services.

(b) Is customarily engaged in an independently established trade, business or profession providing the same type of services to private individuals and organizations as is provided to the employer and whose services to a participating employer are not compensated for on a payroll of that employer, except that persons holding offices provided for by statute shall be considered employes.

(c) Is a patient or inmate of a hospital, home or institution and performs services in the hospital, home or institution.

(27) "Employe required contribution" means the contribution made by an employe under s. 40.05 (1) (a) 1 to 4 or for an employe under s. 40.05 (1) (b).

(28) "Employer" means the state, including each state agency, and any county, city, village, town, school district or any other governmental unit or any instrumentality of 2 or more units of government now existing or hereafter created within the state. A city school district shall be considered a separate employer. Each employer shall be a separate legal jurisdiction for OASDHI purposes.

(29) "Employer required contribution" means the contribution made by an employer under s. 40.05 (2) (a) to (f).

(30) "Executive participating employe" means a participating employe employed in a position designated under s. 20.923 (4), (8) or (9) who:

(a) Commences employment in the position on or after July 1, 1973; or

(b) Elected under s. 20.926 (1), 1979 stats., to be included under s. 20.926, 1979 stats.

(31) "Executive service" means creditable service in a position designated under s. 20.923 (4), (8) or (9) as an executive participating employe which accrues on or after the participating employe qualifies as an executive participating employe and, for a participating employe who qualifies as an executive participating employe prior to February 16, 1978, all creditable service in a position designated under s. 20.923 (4), (8) or (9) prior to the date on which the executive participating employe qualified and all creditable service accruing prior to July 1, 1973, for service in a position the duties of which are substantially included in a position designated under s. 20.923 (4), (8) or (9).

(32) "Federal regulations" means the provisions of section 218 of Title II of the federal social security act and applicable regulations adopted under the federal social security act.

(33) "Final average earnings" means:

(a) The monthly rate of earnings, ignoring any fractions of a dollar, obtained by dividing:

1. The participant's total earnings received and for which contributions are made under s. 40.05 (1) and (2) during the 3 annual earnings periods (excluding any period more than 3 years prior to the effective date for any participating employer) in which the earnings (other than earnings for executive service after December 31, 1973, or the date the participant attains the age of 62 years, whichever date is later) were the highest; by

2. Twelve times the total amount of creditable service for the 3 periods.

(b) For a state elected official who is prohibited by law from receiving an increase in compensation during the official's term of office and who so elects, one-twelfth of the annual salary which would have been payable to the participant during the last completed month in which the participant was a participating employe in such a position if the participant had not been prohibited by law from receiving an increase in salary during his or her term of office, but only with respect to service as a state elected official.

(34) "Fixed annuity" means any annuity other than a variable annuity.

(35) "Fund" means the public employe trust fund.

(36) "Governing body" means the legislature or the head of each state agency with respect to employes of that agency for the state, the common council in cities, the village board in villages, the town board in towns, the county board in counties, the school board in school districts, or the board, commission or other governing body having the final authority for any other unit of government or for any agency or instrumentality of 2 or more units of government.

(37) "Health insurance" means contractual arrangements which may include, but are not limited to, indemnity or service benefits, or prepaid comprehensive health care plans, which will provide full or partial payment of the financial expense incurred by employes and dependents as the result of injury, illness or preventive medical procedures. The plans may include hospitalization, surgical and medical care, as well as ancillary items or services as determined by the group insurance board. The plans may include the type of coverage normally referred to as "major medical" insurance.

(38) "Immediate annuity" means an annuity, not including an annuity from additional contributions, which begins to accrue not later than 30 days after termination of employment.

(39) "Insured employe" means, for purposes of each insurance benefit plan, any eligible employe who is currently covered by the benefit

plan by virtue of having elected (or not having waived) coverage.

(40) "Leave of absence" means any period during which an employe has ceased to render services for and receive earnings from a participating employer and there has been no formal termination of the employer-employe relationship. For purposes of the fund every leave of absence, except a military leave or union service leave, shall terminate 3 years after it begins or, if earlier, upon the date specified by the employer in a notification to the department that the employer-employe relationship has terminated. A leave of absence is not deemed ended or interrupted by reason of resumption of active duty until the employe has resumed active performance of duty for 30 consecutive calendar days for at least 50% of what is considered that employe's normal work time with that employer.

(41) "Milwaukee teacher" means any teacher employed by the board of school directors of the city of Milwaukee.

(42) "Normal retirement date" means:

(a) The date on which a participant attains the age of 55 years for a protective occupation participant.

(b) The date on which the participant attains the age of 62 years for an elected official.

(c) The date on which an executive participating employe attains the age of 62 years except that for the purpose of calculating a disability benefit under s. 40.63 (8) the normal retirement date of an executive participating employe is the date the employe attains the age of 65 years.

(d) The date on which a participant attains the age of 65 years for any participant not subject to par. (a), (b) or (c) except as provided by pars. (e) to (g).

(f) The date on which the participant attains the age of 62 years, for the purpose of calculating a retirement annuity only, for creditable service as a teacher which is otherwise subject to par. (d), if:

1. The participant applies for an annuity prior to July 1, 1984;

2. The employer elects to apply that date under the procedures provided under s. 42.245 (2) (bm) or 42.78 (2) (bm), 1979 stats., prior to July 1, 1984;

3. The participant voluntarily terminates employment with the employer after it elects under s. 42.245 (2) (bm) or 42.78 (2) (bm), 1979 stats., or subd. 2; and

4. The creditable service of the participant as a teacher terminates when the participant is employed by an employer which has elected under s. 42.245 (2) (bm) or 42.78 (2) (bm), 1979 stats., or subd. 2.

(g) The date applicable to the participant under pars. (a) to (f) at the earlier of either the date it is necessary to make any determination or to take any action relative to the participant for purposes of the retirement system or the date of termination of employment of the participant, notwithstanding the fact that a participant may have been in one or more different employment categories at any previous time except for the purpose of calculating an annuity. For the purpose of calculating an annuity, the normal retirement date for each category provided by pars. (a) to (d) applies to service which is subject to that category unless an earlier normal retirement date applies to the creditable service under par. (f). For the purpose of calculating a retirement benefit for an executive participating employe qualifying only under sub. (30) (b) a normal retirement date of the date the executive participating employe attains the age of 62 years shall be applied to creditable service of the executive participating employe for which par. (d) would otherwise apply except the number of creditable service years to which that normal retirement date shall be applied may not exceed the number of executive service years of the executive participating employe.

(43) "OASDHI" means federal old-age, survivors, disability and health insurance under Titles II and XVIII of the federal social security act.

(44) "OASDHI benefit" means the primary or disability insurance monthly benefit amount for which a person is eligible, or for which a participant will be eligible upon attaining the lowest age at which old-age benefits are payable under the OASDHI program.

(45) "Participant" means any person included within the provisions of the Wisconsin retirement system by virtue of being or having been a participating employe whose account has not been closed under s. 40.25 (1) or (2).

(46) "Participating employe" means an employe who is currently in the service of, or an employe who is on a leave of absence from, a participating employer under the Wisconsin retirement system and who has met the requirements of s. 40.22.

(47) "Participating employer" means, for purposes of each of the respective benefit plans, any employer subject to the provisions of that plan under this chapter.

(48) "Protective occupation participant" means any participant whose principal duties are determined by the participating employer, or by the department head in the case of a state employe, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high

degree of danger or peril and also require a high degree of physical conditioning.

(a) "Protective occupation participant" is deemed to include any participant whose name is certified to the fund as provided in s. 40.06 (1) (d) and who is a conservation warden, conservation patrol boat captain, conservation patrol boat engineer, conservation pilot, conservation patrol officer, forest fire control assistant, member of the state patrol, state motor vehicle inspector (if hired prior to January 1, 1968), police officer, fire fighter, sheriff, undersheriff, deputy sheriff, county traffic police officer, state forest ranger, fire watcher employed by the Wisconsin veterans home, state correctional-psychiatric officer, state investigator in the department of revenue whose primary duties consist of investigational work in enforcing compliance with alcoholic beverage, gambling, prostitution or cigarette laws, special agent in the division of criminal investigation of the department of justice, assistant or deputy fire marshal.

(b) Each determination of the status of a participant under this subsection shall include consideration, where applicable, of the following factors:

1. A "police officer" is any officer, including the chief, or employe of a police department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employe is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement. Police officer includes any person regularly employed and qualifying as a patrol officer or a person of equal or higher rank, even if temporarily assigned to other duties.

2. A "fire fighter" is any officer, including the chief, or employe of a fire department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active fire suppression or prevention even though such an employe is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active fire suppression or prevention. Fire fighter includes any person regularly employed and qualifying as a fire fighter, hose handler or a person of equal or higher rank, even if temporarily assigned to other duties.

3. A "deputy sheriff" or a "county traffic police officer" is any officer or employe of a sheriff's office or county traffic department, except one whose principal duties are those of a telephone operator, clerk, stenographer, ma-

chinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employe is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement. Deputy sheriff or county traffic police officer includes any person regularly employed and qualifying as a deputy sheriff or county traffic police officer, even if temporarily assigned to other duties.

(49) "Retired employe" means a former insured employe who is not a participating employe and who is retired on an immediate or disability annuity or who receives a lump sum payment under s. 40.25 (1) which would have been an immediate annuity if paid as an annuity or who is an eligible employe under sub. (25) (b) 6.

(50) "Retirement annuity" means any annuity payable under s. 40.23, including the continuation of retirement annuities after the death of the participant.

(51) "Retirement system" means a pension, annuity, retirement or similar fund or system established by this state or by a political subdivision of this state.

(52) "Salary index" means the same rate as the assumed rate, for the 4 consecutive calendar years commencing on January 1, 1982 and for each subsequent calendar year the percentage increase in the average of all earnings paid during the preceding calendar year over the average of all earnings paid in the next preceding calendar year to participants who were participating employes throughout both preceding calendar years.

(53) "Secretary" means the secretary of the department.

(54) "State agency" means any office, department or independent agency in the executive, legislative and judicial branches of state government and includes the following:

(a) The Minnesota-Wisconsin boundary area commission, but only with respect to employes who, as a result of any agreement approved under s. 14.82, are not eligible to receive similar benefits from any other state covering the same period.

(b) The Wisconsin housing finance authority.

(c) The Wisconsin health facilities authority.

(d) The Wisconsin solid waste recycling authority.

(55) "Teacher" means any employe engaged in the exercise of any educational function for compensation in the public schools or the university in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity, but does

not include any employe determined to be an auxiliary instructional employe under s. 115.29 (3). "Teacher" includes the following:

(a) Any person employed as a librarian by any school board in a library in any school under its jurisdiction, whose qualifications as a librarian are at least equal to the minimum librarian qualifications prescribed by the state superintendent of public instruction.

(b) Any person employed as a full-time social center, community house, adult education or recreation director, instructor or other employe employed by the board of school directors of the city of Milwaukee, who possesses the qualifications required for employment as a teacher.

(56) "Union service leave" means that period of absence from employment commencing on the date an employe commences a leave of absence for the purpose of serving in a position with a labor organization representing employes of the employe's employer, and terminating on the date that leave of absence terminates or the date that service with that labor organization terminates, whichever first occurs.

(57) "University" means any college, school or department under the control and management of the board of regents of the university of Wisconsin system under ch. 36.

(58) "Variable annuity" means any annuity provided by the accumulations in the variable annuity division established under s. 40.04 (7) providing for the dollar amount of benefits or other contractual payments or values to vary so as to reflect differences which may arise between the total value of the annuity reserve for variable annuities and the reserve that would be required if the annuities were fixed annuities.

History: 1981 c. 96, 187, 250, 274, 386.

40.03 Powers and duties. (1) EMPLOYE TRUST FUNDS BOARD. The board:

(a) Shall authorize and terminate the payment of all annuities and death benefits, except disability annuities, in accordance with this chapter and may adjust the computation of the amount, as provided by this chapter, as necessary to prevent any inequity which might otherwise exist if a participant has a combination of full-time and part-time service, a change in annual earnings period during the high years of earnings or has previously received an annuity which was terminated.

(b) Shall approve the tables to be used for computing benefits under the Wisconsin retirement system after certification of the tables in writing by the actuary.

(c) Shall appoint the secretary of the department and may employ or select any medical, legal and other independent contractors as are required for the administration of the fund.

(d) Shall select and retain an actuary or an actuarial firm, under one or more contractual agreements which shall run to the department for the purpose of performing all actuarial services which are necessary for the operation and control of each of the insurance and benefit programs under this chapter. Under this paragraph, the board shall:

1. Determine the requirements for and qualifications of the actuary or the actuarial firms so retained.

2. Determine the terms and conditions of each contractual agreement, and the time any contractual agreement shall be in force.

3. Determine the procedure for the selection of an actuary or an actuarial firm.

4. Direct the secretary to sign on behalf of the department any contractual agreement approved by the board.

(e) Shall approve the contribution rates and actuarial assumptions determined by the actuary under sub. (5) (b) and (c).

(f) May compel witnesses to attend meetings and to testify upon any necessary matter concerning the fund and authorize fees not in excess of the statutory provisions for witnesses.

(g) May determine the length of creditable prior service from information available. Any determination shall be conclusive as to any period of service unless, within the time limits specified in s. 40.08 (10), the board reconsiders any case and changes the determination.

(h) May accept any gift, grant or bequest of any money or property of any kind, for the purposes designated by the grantor if the purpose is specified as providing cash benefits to some or all of the participants, insured employes or annuitants of this fund or for reducing employer or employe costs; or, if no purposes are designated, then for the purpose of distribution to the several accounts and reserves of the Wisconsin retirement system at the end of the year as if the money or property were investment earnings of the fixed annuity division.

(i) May determine that some or all of the disability annuities and death benefits provided from the Wisconsin retirement system shall instead be provided through group insurance plans to be established by the group insurance board either as separate plans or as integral parts of the group life and income continuation insurance plans established under this chapter.

(j) Shall accept appeals which have been timely filed in writing from determinations, other than determinations made regarding disability annuities, made by the department. Unless otherwise specifically provided by statute an appeal to the board is timely filed if received in the department's offices in writing not later than 90 days after the date notice of the determina-

tion is mailed to the person appealing. The board shall review the relevant facts and may hold a hearing. Upon completion of its review and hearing, if any, the board shall make a determination which it shall certify to the participating employer or the appropriate state agency and to the appropriate employe, if any. The board's determination of an employe's status under s. 40.06 (1) (e) shall remain in effect until receipt by the department of notification indicating a different classification. A participant may appeal that determination as provided by s. 40.06 (1) (e).

(k) May require any employer to distribute to its employes any materials which are determined to be necessary for the efficient administration of the fund.

(L) May delegate powers and duties as deemed necessary or desirable.

(m) Shall approve or reject all administrative rules proposed by the secretary under sub. (2) (i).

(2) SECRETARY. The secretary:

(a) Shall be in charge of the administration of the department and exercise, as head of the department, all powers and duties specified in ss. 15.04 and 15.05.

(b) Shall employ and select administrative, clerical or other employes as required for the administration of this chapter and establish the internal organization of the department, but the department shall always maintain an office in Milwaukee.

(c) Shall process all applications for annuities and benefits and may initiate payment based on estimated amounts, when the applicant is determined to be eligible, subject to correction upon final determination of the amount of the annuity or benefit.

(d) May suspend an annuity pending final action by the board, or a disability annuity pending final action by the Wisconsin retirement board or the teachers retirement board, when, in the secretary's judgment, the annuitant is not eligible to receive the annuity.

(e) Shall submit to each employer and, upon request, to each individual participating in any of the benefit plans administered by the department the report required under s. 15.04 (1) (d) or a summary of the report. The report shall be in lieu of any reports required by ss. 15.07 (6) and 15.09 (7) or any other law and shall include financial and actuarial balance sheets which reflect changes in the asset, liability and reserve accounts and additional statistics which the secretary determines to be necessary or desirable for a full understanding of the status of the fund and the benefit plans.

(f) May delegate to other departmental employes any power or duty of the secretary.

(g) Shall submit once each year to each participant currently making contributions, and to any other participant upon request or as in the secretary's judgment is desirable, a statement of the participant's account together with appropriate explanatory material.

(h) May request any information from any participating employe or from any participating employer as is necessary for the proper operation of the fund.

(i) Shall establish, with the approval of the board, all rules required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules relating to teachers must be approved by the teachers retirement board and rules relating to participants other than teachers must be approved by the Wisconsin retirement board.

(j) May authorize any governing body in a written designation filed by the governing body with the department to have an agent or agents to act for the governing body in all matters pertaining to the fund.

(k) May determine an amount, and the procedure for establishing the amount, of OASDHI benefits for any person using any information the department has available in its records and any assumptions as to data not in the department's records as deemed appropriate for estimating the benefits unless the person establishes, through a certification of the person's social security earnings record or actual benefit amount, a different amount payable. In the case of any participant whose earnings are not subject to Titles II and XVIII of the federal social security act by reason of eligibility for a choice provided by statute, it is conclusively assumed in making the estimate, regardless of the person's actual federal social security earnings record, that 50% of those earnings are and were subject to Titles II and XVIII of the federal social security act. The secretary may require the person to provide the department with a certification of the person's social security earnings record or benefit amount as a condition for receiving benefits under this chapter. If a participant does not receive the OASDHI benefit for which the person is or will be eligible by reason of failure to apply for the benefit or by virtue of the suspension of the benefit the participant will nevertheless be deemed to have received the OASDHI benefit amount for purposes of any benefit computation under this chapter.

(L) Shall determine each calendar year's effective rate.

(m) Shall have all other powers necessary to carry out the purposes and provisions of this

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chapter, except as otherwise specifically provided by this chapter.

(n) Shall have any additional powers and duties as are delegated by the board.

(p) Shall establish procedures for and conduct the elections of board members required under s. 15.165 (3) (a) 1, 2, 6 and 7. The procedures shall include the establishment of a nominating process and shall provide for the distribution of ballots to all participating employes and annuitants eligible to vote in the election.

(3) DEPARTMENT OF JUSTICE. The department of justice shall furnish legal counsel and shall prosecute or defend all actions brought by or against the board, department, group insurance board or any employe of the department as a result of the performance of the department employe's duties.

(4) STATE TREASURER. The state treasurer shall be the treasurer of the fund.

(5) ACTUARY. The actuary or actuarial firm retained under sub. (1) (d):

(a) Shall be the technical advisor of the board, the secretary and the group insurance board on any matters of an actuarial nature affecting the soundness of the fund or requiring any changes for more satisfactory operation.

(b) Shall make a general investigation at least once every 3 years of the experience of the Wisconsin retirement system relating to mortality, disability, retirement, separation, interest, employe earnings rates and of any other factors deemed pertinent and to certify, as a result of each investigation, the actuarial assumptions to be used for computing employer contribution rates, the assumed rate and the tables to be used for computing annuities and benefits, provided the tables shall not provide different benefits on the basis of sex for participants or beneficiaries similarly situated. If the assumed rate changes, the actuary shall at the same time adjust the assumptions for future changes in employe earnings rates to be consistent with the new assumed rate. The recommended actuarial assumptions shall be based on the system's own experience as identified in the general investigations unless lack of adequate information or unusual circumstances are specifically identified and fully described which require use of other groups' experience and such other experience is not inconsistent with the system's own experience. When considering or implementing new or changed benefit provisions and areas of risk, the assumptions may be based solely on the experience of other groups until 5 years of the system's own experience is available for use as long as such other experience is not inconsistent with the system's own experience.

(c) Shall determine the proper rates of premiums and contributions required, or advise as to the appropriateness of premium rates proposed by independent insurers, for each of the benefit plans provided for by this chapter.

(d) Shall make an annual valuation of the liabilities and reserves required to pay both present and prospective benefits.

(e) Shall certify the actuarial figures on the annual financial statements required under sub. (2) (e).

(6) GROUP INSURANCE BOARD. The group insurance board:

(a) 1. Shall, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter; or

2. May, wholly or partially in lieu of subd. 1, on behalf of the state, provide any group insurance plan on a self-insured basis in which case the group insurance board shall approve a written description setting forth the terms and conditions of the plan, and may contract directly with providers of hospital, medical or ancillary services to provide insured employes with the benefits provided under this chapter.

(b) May provide other group insurance plans for public employes and their dependents, in addition to the group insurance plans specifically provided under this chapter. Unless the employer specifically provides otherwise the terms of the group insurance contracts under this paragraph shall provide that the employer is not liable for any obligations accruing from the operation of any group insurance plan.

(c) Shall not enter into any agreements to modify or expand group insurance coverage in a manner which conflicts with this chapter or rules of the department or materially affects the level of premiums required to be paid by the state or its employes, or the level of benefits to be provided, under any group insurance coverage. This restriction shall not be construed to prevent modifications required by law, prohibit the group insurance board from providing optional insurance coverages as alternatives to the standard insurance coverage when any excess of required premium over the premium for the standard coverage is paid by the employe or prohibit the group insurance board from providing other plans as authorized under par. (b).

(d) May take any action as trustees which is deemed advisable and not specifically prohibited or delegated to some other governmental agency, to carry out the purpose and intent of the group insurance plans provided under this chapter, including, but not limited to, provisions in the appropriate contracts relating to:

1. Eligibility of active and retired employes to participate, or providing the employe the opportunity to decline participation or to withdraw.

2. The payments by employes for group insurance.

3. Enrollment periods and the time group insurance coverage shall be effective.

4. The time that changes in coverage and premium payments shall take effect.

5. The terms and conditions of the insurance contract or contracts, including the amount of premium.

6. The date group insurance contracts shall be effective.

7. Establishment of reserves.

(e) Shall apportion all excess moneys becoming available to it through operation of the group insurance plans to reduce premium payments in following contract years or to establish reserves to stabilize costs in subsequent years. If it is determined that the excess became available due to favorable experience of specific groups of employers or specific employe groups, the apportionment may be made in a manner designated to benefit the specific employers or employe groups only, or to a greater extent than other employers and employe groups.

(f) Shall take prompt action to liquidate any actuarial or cash deficit which occurs in the accounts and reserves maintained in the fund for any group insurance benefit plan.

(g) Shall determine the amount of insurance and extent of coverage provided and amount of premiums required during a union service leave. The amount of insurance and extent of coverage shall be not less than that in effect immediately preceding the commencement of the union service leave.

(7) TEACHERS RETIREMENT BOARD. The teachers retirement board:

(a) Shall appoint 4 members of the employe trust funds board as provided under s. 15.16 (1).

(b) Shall study and recommend to the secretary and the employe trust funds board alternative administrative policies and rules which will enhance the achievement of the objectives of the benefit programs for teacher participants.

(c) Shall appoint one member of the investment board as provided under s. 15.76 (3).

(d) Shall approve or reject all administrative rules proposed by the secretary under sub. (2) (i) that relate to teachers.

(e) Shall authorize and terminate the payment of disability annuity payments to teacher participants in accordance with this chapter.

(f) Shall accept appeals which have been timely filed from determinations made by the department regarding disability annuities for teacher participants in accordance with s. 40.63 (5) and (9) (d).

(g) May amend any rule of the department, the Milwaukee teachers retirement board, the state teachers retirement board and the Wisconsin retirement fund board, which are in effect on January 1, 1982, in such a manner as to make it no longer applicable to teacher participants.

(8) WISCONSIN RETIREMENT BOARD. The Wisconsin retirement board:

(a) Shall appoint 4 members of the employe trust funds board as provided under s. 15.16 (1).

(b) Shall study and recommend to the secretary and the employe trust funds board alternative administrative policies and rules which will enhance the achievement of the objectives of the benefit programs for participants other than teachers.

(c) Shall appoint one member of the investment board as provided under s. 15.76 (3).

(d) Shall approve or reject all administrative rules proposed by the secretary under sub. (2) (i) that relate to participants other than teachers.

(e) Shall authorize and terminate the payment of disability annuity payments to participants other than teachers in accordance with this chapter.

(f) Shall accept appeals which have been timely filed from determinations made by the department regarding disability annuities for participants other than teachers in accordance with s. 40.63 (5) and (9) (d).

(g) May amend any rule of the department, the Milwaukee teachers retirement board, the state teachers retirement board and the Wisconsin retirement fund board, which are in effect on January 1, 1982, in such a manner as to make it no longer applicable to participants other than teachers.

History: 1981 c. 96 ss. 24, 32; 1981 c. 386.

40.04 Accounts and reserves. (1) The separate accounts and reserves under subs. (2) to (9) and any additional accounts and reserves determined by the department to be useful in achieving the fund's purposes, or necessary to protect the interests of the participants or the future solvency of the fund, shall be maintained within the fund. The accounts and reserves maintained for each benefit plan shall fairly reflect the operations of that benefit plan and any deficit occurring within the accounts of a benefit plan shall not be offset against balances or reserves in any other benefit plan.

(2) An administrative account shall be maintained within the fund from which administrative costs of the department, including charges for services performed by others, shall be paid. Except as otherwise provided in this section, investment income of this fund and moneys received for services performed or to be per-

formed by the department shall be credited to this account. The secretary shall estimate the administrative costs to be incurred by the department in each fiscal year and shall also estimate the investment income which will be credited to this account in the fiscal year. The estimated administrative costs less the estimated investment income shall be equitably allocated by the secretary, with due consideration being given to the derivation and amount of the investment income, to the several benefit plans administered by the department. In determining the amount of the allocation, adjustments shall be made for any difference in prior years between the actual administrative costs and investment income from that originally estimated under this subsection. An amount equal to the adjusted allocated costs shall be transferred to this account from the investment earnings credited to the respective benefit plan accounts and from payments by the respective insurers for administrative services.

(3) A fixed retirement investment trust and a variable retirement investment trust shall be maintained within the fund under the jurisdiction and management of the investment board for the purpose of managing the investments of the retirement reserve accounts and of any other accounts of the fund as determined by the board. Within the fixed retirement investment trust there shall be maintained a transaction amortization account and a current income account, and any other accounts as are established by the board or the investment board.

(a) All earnings, profits or losses of the fixed retirement investment trust and the net gain or loss of the variable retirement investment trust shall be distributed annually on December 31 to each participating account in the same ratio as each account's average daily balance within the respective trust bears to the total average daily balance of all participating accounts in that trust. For the fixed retirement investment trust the amount to be distributed shall be the then balance of the current income account plus 7% of the then balance of the transaction amortization account. For the variable retirement investment trust the amount to be distributed shall be the excess of 1) the increase within the period in the value of the assets of the trust resulting from income from the investments of the trust and from the sale or appreciation in value of any investment of the trust, over 2) the decrease within the period in the value of the assets resulting from the sale or the depreciation in value of any investments of the trust.

(b) The assets of the fixed retirement investment trust shall be commingled and the assets of the variable retirement investment trust shall be commingled. No particular contributing benefit

plan shall have any right in any specific item of cash, investment or other property in either trust other than an undivided interest in the whole as provided in this paragraph. The department of administration shall maintain any records as may be required to account for each contributing account's share in the corresponding trust except that the employe accumulation reserve, the employer accumulation reserve and the annuity reserve shall be treated as a single account, except as provided in sub. (7).

(c) The department shall advise the investment board and the state treasurer as to the limitations on the amounts of cash to be invested from investment trusts under this subsection in order to maintain the cash balances deemed advisable to meet current annuity, benefit and expense requirements.

(d) Notwithstanding par. (a), assets of the fixed retirement investment trust which are authorized to be invested in common or preferred stock may, if authorized by rule, be invested as a part of the variable retirement investment trust with that portion of the annual distributions of net gains or losses to the fixed retirement investment trust from the variable retirement investment trust as provided in par. (a) which results from transactions or events described in s. 25.17 (14) (f) being credited to the transaction amortization account and the balance of the distributions being credited to the current income account.

(4) (a) An employe accumulation reserve, within which a separate account shall be maintained for each participant, shall be maintained within the fund and:

1. Credited with all employe contributions made under s. 40.05 (1) and all employer additional contributions made under s. 40.05 (2) (g) and all contribution accumulations reestablished under s. 40.26 or 40.63 (10).

2. Credited with interest at the effective rate, as of each December 31, and credited with interest at the assumed rate, as provided in par. (b), on the prior year's closing balance.

3. Debited by the amount available in any participant's account for funding a benefit elected by the participant or the participant's beneficiary. When the amount available has been applied to funding the benefit, no further right to the amounts, or to corresponding creditable service and employer contribution accumulations, shall exist other than the right to the annuity or benefit so granted except as provided in s. 40.26 or 40.63 (10).

(b) Whenever a payment under s. 40.25 (2) or (4), an annuity or a death benefit is computed, the prior year's closing balance of all employe contribution accumulations and any accounts maintained for individual participants

shall be credited with interest for each full month elapsing between the first day of the calendar year and the annuity effective date or the month in which the payment of a benefit under s. 40.25 (2) or (4) is approved at one-twelfth of the assumed rate. The interest so credited shall be charged to the interest earnings for the current year and shall be paid out or transferred with the amount to which it was so credited.

(c) Whenever a participant's account is reestablished under s. 40.26 (2) or 40.63 (10), in lieu of interest credits as provided in par. (a), any balances remaining in the account at the end of the calendar year in which reestablished shall be credited with interest at one-twelfth the effective rate for the year for each full month between the date the account was reestablished and the end of the calendar year.

(5) An employer accumulation reserve shall be maintained within the fund to which, without regard to the identity of the individual employer, shall be:

(a) Credited all employer required contributions.

(b) Credited, as of each December 31, interest at the effective rate on the prior year's closing balance.

(c) Debited the aggregate excess of 1) the amount of each single sum benefit or in the case of an annuity the present value of the annuity over 2) the amount equal to the accumulated credits of the participant in the employe accumulation reserve applied to provide for the benefit or annuity.

(d) Credited as of the date of termination of any annuity under s. 40.26 or 40.63 (9) (c) with the excess of the then present value of the terminated annuity over the aggregate amount of credits reestablished in the accounts of the participant.

(e) Credited all amounts waived, released or forfeited under any provision of this chapter.

(6) An annuity reserve shall be maintained within the fund to which shall be transferred amounts equal to the present value as of the date of commencement of annuities granted under this chapter. The reserve shall be increased by investment earnings at the effective rate and shall be reduced by the aggregate amount of annuity payments and death benefits paid with respect to the annuities and by the present value at the date of termination of annuities terminated in accordance with s. 40.08 (3), 40.26 or 40.63 (9) (c).

(7) The reserves established under subs. (4), (5) and (6) shall be divided both individually and for the purposes of sub. (3) between a fixed annuity division and a variable annuity division.

All required and additional contributions shall be credited to the fixed annuity division except:

(a) As otherwise elected by a participant prior to April 30, 1980. Any participant whose accounts on January 1, 1982, include credits segregated for a variable annuity shall have his or her required and additional contributions made on or after January 1, 1982, credited to the variable annuity division in a manner consistent with the participant's election prior to April 30, 1980, unless prior to January 1, 1982, the participant terminated such election under s. 40.85, 1979 stats. The department shall by rule provide that any participant who elected variable participation prior to April 30, 1980, may elect to cancel that variable participation as to future contributions. The department's rules shall permit a participant who elects or has elected to cancel variable participation as to future contributions, or an annuitant, to elect to transfer previous variable contribution accumulations to the fixed annuity division. A transfer of variable contribution accumulations under this paragraph shall result in the participant receiving the accrued gain or loss from the participant's variable participation. A participant may specify that election to cancel participation in the variable annuity division is conditional. If the participant so specifies the election is effective on the first date on which it may take effect on which the participant:

1. Is an annuitant and the amount of the annuity the participant or member will receive if the election is made effective is greater than or equal to the amount of the annuity the participant or member would have received if the participant or member had not elected variable participation; or

2. Is not an annuitant and the accumulated amount which is to be transferred to the fixed annuity division is equal to or greater than the amount which would have accumulated if the segregated contributions had been originally credited to the fixed annuity division.

(b) An election under par. (a) is irrevocable and continuing except a participant or member may make a conditional election unconditional by filing written notice with the department.

(c) Any participant whose required contributions are segregated in any portion to provide for a variable annuity may direct that any part or all of subsequent additional contributions credited to the participant's account be segregated to provide for a variable annuity and may at any time by filing a form prescribed by the department change the portion being segregated for any future additional contributions.

(8) A social security account shall be maintained within the fund to which shall be credited all moneys received from employe and employer

OASDHI contributions including any penalties for late transmission of moneys or reports. All disbursements under subch. III shall be charged to this account.

(9) Separate group health, income continuation and life insurance accounts, and additional accounts for any other type of insurance provided under this chapter shall be maintained within the fund, to which shall be credited moneys received from operations of the respective group insurance plans for insurance premiums, as dividend or premium credits arising from the operation of the respective insurance plans and from investment income on any reserves established in the fund for the respective insurance plans. Premium payments to insurers, any insurance benefit to be paid directly by the fund and reimbursements of 3rd parties for benefits paid on behalf of an insurance plan shall be charged to the corresponding account established for that benefit plan. This subsection shall not be construed to prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for direct payments.

History: 1981 c. 96, 386.

40.05 Contributions and premiums. (1)

EMPLOYER RETIREMENT CONTRIBUTIONS. For Wisconsin retirement system purposes employe contributions on earnings for service credited as creditable service shall be made as follows:

(a) Except as provided in par. (b):

1. For each participating employe not otherwise specified, 5% of each payment of earnings.

2. For each participating employe whose formula rate is determined under s. 40.23 (2) (b) 2, 5 1/2% of each payment of earnings.

3. For each participating employe whose formula rate is determined under s. 40.23 (2) (b) 3, 6% of each payment of earnings.

4. For each participating employe whose formula rate is determined under s. 40.23 (2) (b) 4, 8% of each payment of earnings.

5. Additional contributions may be made by any participant by deduction from earnings or otherwise or may be provided on behalf of any participant, subject to any limitations imposed on contributions by the U.S. internal revenue code, applicable regulations adopted under the internal revenue code and rules of the department.

(b) In lieu of employe payment, the employer may pay all or part of the contributions required by par. (a), but all the payments shall be available for benefit purposes to the same extent as required contributions deducted from earnings of the participating employes. Action to assume employe contributions as provided under this paragraph shall be taken at the time

and in the form determined by the governing body of the participating employer. The state shall pay under this paragraph an amount equal to 4% of the earnings paid by the state unless otherwise provided in accordance with a collective bargaining agreement under subch. V of ch. 111 or s. 230.12.

(2) EMPLOYER RETIREMENT CONTRIBUTIONS. For Wisconsin retirement system purposes:

(a) Contributions shall be made by each participating employer for current service in a percentage of the earnings of each participating employe determined as though all employes of all participating employers are employes of a single employer but with a separate percentage rate determined for each of the categories specified under s. 40.23 (2) (b) and for subcategories within each category as determined by rule to be necessary for equity among employers, including a subcategory for employes covered under s. 40.65 (1). The rates shall be determined on the basis of the information available at the time the determinations are made, and on the assumptions the actuary recommends from time to time and the board approves, by deducting from the then present value of all future benefits to be paid or purchased from the employer accumulation reserve on behalf of the then participants the amount then credited to the reserve for the benefit of the members and the present value of future prior service contributions of the employers determined in accordance with par. (b), and dividing the remainder by the present value of the prospective future compensation of all participants.

(b) Contributions shall be made by each participating employer for creditable prior service in a percentage of the earnings of each participating employe, but with a separate percentage rate determined for each of the categories and subcategories for which separate rates are determined under par. (a), determined as of January 1, 1982, or the employer's effective date of participation if later, to be sufficient to amortize as a level percent of payroll over a period of 37 years from that date, the prior service liability of the employer on that date determined under ss. 41.105 (1) (c) and (d), 42.46 (3) (a) and 42.89 (6) (a), 1979 stats., but adjusted to reflect the effect of other provisions of chapter 96, laws of 1981. In determining the percentages under this paragraph, it shall be assumed that the covered payroll of each employer will increase at the rate of 4% per year following January 1, 1982, or the employer's effective date of participation if later. Advance contributions of amounts determined by any participating employer may be made for the purpose of reduc-

ing that employer's then existing prior service liability.

(c) The percentage rates determined under this subsection shall become effective as of the beginning of the calendar year to which they are applicable and shall remain in effect during the calendar year, except that the secretary, upon the written certification of the actuary, may change any percentage determined under par. (b) during any calendar year for the purpose of reflecting any reduced obligation which results from any payment of advance contributions.

(d) The amount of each employer's monthly contribution shall be the sum of the amounts determined by applying the proper percentage rates as determined in accordance with pars. (a) and (b) to the total of all earnings paid to participating employes on each payday.

(f) Whenever the existence of any participating employer is terminated because of consolidation or for any other reason, the employer who thereafter has responsibility for the governmental functions of the previous employer shall be liable for all contributions payable by the previous employer in the following manner:

1. If the territory of the previous employer is attached to 2 or more employers, the total liability of the previous employer shall be allocated to the new employers in proportion to the equalized valuation of each area so attached.

2. Whenever the existence of any participating employer, who was an instrumentality of 2 or more employers, is terminated for any reason and there is no territory to be divided, the liability for contributions of the previous employer shall be divided between the sponsoring employers in the same proportion as the net assets of the terminating employer are divided.

3. If the department determines that it is not feasible to allocate the liability as provided in subd. 1 or 2, then the liability shall be allocated in proportion to the equalized valuation of the remaining employers.

4. The amount of the allocations to the respective employers shall be certified by the department to each employer.

5. If the employer to whom such an allocation is made is or becomes a participating employer the allocations so certified shall be added to the liability otherwise determined for the employer and the amortization schedule provided for under par. (b) adjusted so that the required annual amount shall approximate the sum of the annual amounts otherwise required.

6. If the employer who becomes responsible for any part of the liability of the previous employer is not a participating employer the contributions required to liquidate the allocated liability shall be made by the successor employer in equal quarterly payments sufficient to liqui-

date the allocated liability over the remainder of the amortization period.

7. If an allocation based on equalized valuation is required by this paragraph, the equalized valuations used shall be the valuation determined for the calendar year immediately preceding the calendar year in which the allocation is required to be made by this paragraph.

(g) A participating employer may make contributions for any participating employe in addition to the employer contributions required by this subsection. The additional contributions shall be administered in the following manner:

1. The additional contributions shall be available for all benefit purposes and shall be administered and invested on the same basis as employe additional contributions.

2. Computation of employe and employer contributions and of all benefits under this chapter shall include the employer additional contributions as earnings of the employe to the same extent that they would have been included if paid to the employe.

(h) Any school district created from the territory of a former joint city school district may elect to be liable for its proportionate share, as determined by the board, of the liability of the city under par. (b) on the date the independent school district is or was created.

(i) If an annuity is calculated under s. 40.02 (42) (f) the employer shall pay to the department the difference, as determined by the department, between the actuarial cost of the annuity which would have been paid if the employer had not elected under s. 42.245 (2) (bm) or 42.78 (2) (bm), 1979 stats., or s. 40.02 (42) (f) 2, and the actual cost of the annuity payable. The amount payable shall be paid to the department in 3 equal annual payments, plus interest at the effective rate unless the employer pays the full amount due. Each annual payment is due and shall be included with the first payment made under s. 40.06 (1) in each fiscal year after the annuity effective date. The amount so paid shall be credited as employer required contributions.

(3) SOCIAL SECURITY CONTRIBUTIONS. Each employer included under an agreement made under subch. III shall make the contributions required under federal regulations and shall also withhold from the wages of each of its employes who are covered by the state-federal agreement provided for by subch. III the amount required to be withheld under federal regulations. The state shall be liable for all remittances due from employers in conformity with agreements under subch. III and shall make payment of all sums which are due under this subsection and become delinquent.

(4) HEALTH INSURANCE PREMIUMS. (a) For health insurance each insured employe and insured retired employe shall contribute the balance of the required premium amounts after applying required employer contributions, if any. Employers shall pay contributions as required by this paragraph for each insured employe who is currently employed and has not been on a leave of absence for more than 3 months effective on the first day of the 7th month commencing after the date the insured employe commences employment with the state. Employers shall pay contributions as required by this paragraph for an insured employe who is an eligible employe under s. 40.02 (25) (a) 2 effective on the date the employe becomes an eligible employe. Except as otherwise provided in accordance with a collective bargaining agreement under subch. V of ch. 111 or s. 230.12, the employer shall pay for its insured employes who are currently employed:

1. For insured part-time employes, including those in project positions as defined in s. 230.27 (1), who work less than 1,044 hours per year, an amount equal to 45% of the gross premium for the standard health insurance coverage established by the group insurance board.

2. For eligible employes not specified in subd. 1, 90% of the gross premium for the standard health insurance coverage established by the group insurance board.

(b) Accumulated unused sick leave under ss. 13.121 (4), 36.30, 230.35 (2), 757.02 (5) and subch. V of ch. 111 of any eligible employe shall, at the time of death, upon qualifying for an immediate annuity or for a lump sum payment under s. 40.25 (1) or upon termination of creditable service and qualifying as an eligible employe under s. 40.02 (25) (b) 6, be converted, at the employe's current basic pay rate, to credits for payment of health insurance premiums on behalf of the employe or the employe's surviving insured dependents. The full premium for any eligible employe who is insured at the time of retirement, or for the surviving insured dependent of an eligible employe in the event of death, shall be deducted from the credits until the credits are exhausted, and then from annuity payments, if the annuity is sufficient. The department shall provide for the direct payment of premiums by the insured to the insurer if the premium to be withheld exceeds the annuity payment.

(c) The employer shall contribute toward the payment of premiums for the plan established under s. 40.52 (3) not more than the percentage of premium paid by the employer for health insurance coverage under par. (a) 2.

(d) For insurance premium withholding purposes, an insured employe on more than one

payroll shall have a premium withheld only under the department or agency paying the greater portion of the employe's earnings.

(5) INCOME CONTINUATION INSURANCE PREMIUMS. For the income continuation insurance provided under subch. V the employe shall pay the amount remaining after the employer has contributed the following or, if different, the amount determined under a collective bargaining agreement under subch. V of ch. 111 or s. 230.12:

(a) For teachers in the unclassified service of the state employed by the board of regents of the university, no contribution if the teacher has less than one year of state creditable service and an amount equal to the gross premium for coverage subject to a 130-day waiting period if the teacher has one year or more of state creditable service.

(b) Except as provided in par. (a), for all insured employes:

1. For the short-term income protection insurance under this section, an amount equal to 100% of the gross premium for any insured employe who accumulates 10 days of sick leave or more each year or who has accumulated 65 days of sick leave or more.

2. For the long-term income continuation insurance under this section, an amount equal to 50% of the gross premium for any insured employe who has accumulated at least 65 days of sick leave, 75% of the gross premium if an insured employe has accumulated at least 91 days of sick leave and 100% of the gross premium if an insured employe has accumulated over 130 days of sick leave.

3. Any insured employe for whom an employer contribution of 50% or more of the premium was paid under subd. 2 shall continue to be eligible for an employer contribution equal to 50% of the premiums until the employe is eligible for a higher level even if, as a result of disability or illness, the accumulation is reduced to less than 65 days.

4. The accrual and crediting of sick leave shall be determined in accordance with ss. 13.121 (4), 36.30, 230.35 (2), 757.02 (5) and subch. V of ch. 111.

(6) LIFE INSURANCE PREMIUMS. For the life insurance coverage provided under subch. VI:

(a) Except as otherwise provided in accordance with a collective bargaining agreement under subch. V of ch. 111 or s. 230.12, each insured employe under the age of 70 and annuitant under the age of 65 shall pay for group life insurance coverage a sum, approved by the group insurance board, which shall not exceed 60 cents monthly for each \$1,000 of group life insurance, based upon the last amount of insurance in force during the month for which earn-

ings are paid. The equivalent premium may be fixed by the group insurance board if the annual compensation is paid in other than 12 monthly instalments.

(b) Beginning with the month in which an insured employe attains age 70 or an annuitant attains the age of 65, no withholdings from earnings shall be made under this subsection.

(c) Beginning with the month in which an insured employe is retired on a disability annuity, and continuing as long as the annuity is not terminated, no further premium shall be required under this subsection for the retired insured employe. No premium is required under this subsection for an insured employe during a period of disability during which premiums are waived under the insurance contract.

(d) Except as provided under par. (c), any insured employe under age 65 who is retired and who is otherwise eligible shall continue to be covered and the premium payment shall be deducted from the appropriate annuity payroll as authorized by s. 40.08 (2), if the annuity is sufficient, or such an employe shall continue to be covered if he or she makes direct payments to continue insurance coverage or if the employe's employer pays, on behalf of the employe, the premium payment directly to the department, according to procedures established by the department.

(e) Each employer shall contribute toward the payment of premiums under this section an amount which, together with the employe's contribution, will equal the gross monthly premium determined by the group insurance board for the employe's insurance and any employer may pay for all employes any part or all of the premium required to be paid by employes under par. (a). If an employer elects to pay the entire premium for all of its employes for one or more of the types of insurance coverage established under s. 40.70 (3), the department shall be notified in writing and any previously filed waivers of that type of coverage for the employes then under 70 shall be revoked effective the first of the month following receipt of the notification or the effective date of the election, whichever is later, and full payment of premiums for the employes shall be initiated beginning on the date the election becomes effective. Any waivers filed by a person previously employed who is hired subsequently by an employer paying the entire premium for all of its employes for the type of coverage waived shall be revoked effective on the subsequent date of hire. If an employer elects to pay the entire premium for a portion of its employes notice is not required and previously filed waivers are not revoked.

(7) OTHER INSURANCE PLANS PREMIUMS. For any group insurance plans provided under s.

40.03 (6) (b) the entire premium shall be paid by employe contributions and there shall be no employer contributions unless the employer specifically provides otherwise.

History: 1981 c 96, 274, 278, 386.

40.06 Reports and payments. (1) (a) Except as otherwise provided by rule or statute, the employe contributions and premium payments specified in s. 40.05 shall be deducted from the earnings of each employe and from the annuity (if sufficient) of each insured retired employe and transmitted to the department, or an agent specified by the department, in the manner and within the time limit fixed by the department together with the required employer contributions and premium payments and reports in the form specified by the department. Notwithstanding any other law, rule or regulation, the payment of earnings less the required deductions shall be a complete discharge of all claims for service rendered during the period covered by the payment.

(b) Each employer shall withhold the amounts specified from any payment of earnings to an employe whose status as a participating or insured employe has not yet been determined under s. 40.22 (1) (b) and shall refund the amount withheld directly to the employe if it is subsequently determined that the employe does not qualify as a participating or insured employe.

(c) For state agencies, employer contributions shall be made from the respective funds from which the salaries are paid to the employe for whom the contributions are being made. The heads of the respective state agencies shall, at the time that salary deductions in accordance with par. (a) are sent to the department, determine the amount of the corresponding employer contributions, indicate the amount of the contribution on the report submitted to the department and prepare a voucher for payment to the department from the appropriate state funds of the amounts payable. The department shall transmit the voucher to the department of administration. The department of administration shall approve the voucher for payment within 5 working days, s. 16.53 (10) notwithstanding, and the state treasurer shall immediately issue a check to the department for the amount of the voucher.

(d) Each participating employer and each state agency shall notify the department in the manner and at the time prescribed by the department, of the names of all participating employes classified as protective occupation participants determined in accordance with s. 40.02 (48) or classified as teacher participants in

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accordance with s. 40.02 (55) or other classification as specified by the department.

(e) A participant may appeal a determination under par. (d) to the department by filing written notice with the department. An appeal under this paragraph does not apply to any service rendered more than 2 years prior to the date the written notice of appeal is received by the department. The department shall investigate the appeal and mail a report of its determination to the participant and the participating employer or state agency. The participant or the participating employer or state agency which gave the notice under par. (d) may appeal the department's determination to the board by filing written notice of appeal with the department not later than 30 days after the report is mailed to the person appealing. If written notice of appeal is not filed as required by this paragraph the determination from which an appeal is permitted is final. A determination of an employee's status under par. (d) made after an appeal is filed under this paragraph shall remain in effect until receipt by the department of a notification indicating a classification for the participant different than the determination. The participant may appeal such a subsequent determination.

(2) (a) If any employer fails to transmit to the department any report required by law or by rule before the end of the calendar month following the date when the report is due, the department shall prepare the report and submit to the employer a statement of the expenses incurred in securing the report, including the value of the personal services rendered in its preparation. The department shall file duplicates of the statement with the department of administration.

(b) Within 30 days after the receipt of the statement under par. (a) by the employer the statement shall be audited as other claims against the employer are audited and shall be paid into the state treasury and credited to the appropriation under s. 20.515 (1) (w).

(c) If the employer defaults on payment of the amount specified in the statement under par. (a), the amount shall become a special charge against the employer and shall be included in the next certification of state taxes and charges and shall be collected, with interest at the rate of one percent per month compounded from the date the statement was submitted to the employer, as other charges are certified and collected, or collected as provided under sub. (4). When the amount and the interest are collected, they shall be credited to the appropriation under s. 20.515 (1) (w).

(3) Interest shall be charged on accounts receivable from any employer if the remittance

and any corresponding report are not received by the department in the manner and within the time limit fixed by rule or statute at the rate of 0.04% for each day, from the due date to the date received by the department with a minimum charge of \$3, and the interest or minimum charge shall be paid immediately to the department. If the amount is not paid within 30 days after it is payable, the amount shall be collected as provided under sub. (4).

(4) (a) Whenever any employer, other than the state, fails to pay to the department any amount due, the department shall certify the amount or the estimated amount to the department of administration which shall withhold the amount or the estimated amount from the next apportionment of state aids or taxes of any kind payable to the employer or, if so directed by the department, collect the amount as provided in sub. (2) (c) and shall pay the amount so withheld or collected to the department. When the exact amount due is determined and the department receives a sum in excess of the exact amount, the department shall pay the excess amount to the employer from whose aid the excess was withheld.

(b) Whenever any amount is payable by a department or agency of the state, the department shall certify the amount payable with an explanation of the charge, together with a voucher in payment for the amount to the department of administration which shall immediately approve the voucher and within no more than 5 days, notwithstanding s. 16.53 (10), make payment from the appropriation of the department or agency which failed to transmit the payment on time.

(5) Whenever it is determined that contributions and premiums were not paid in the year when due, the amount to be paid shall be determined at the employe and employer contribution or premium rates in effect when the payment should have been made and increased by interest at the effective rate which would have been credited if the amount had been paid and deposited in the accumulation reserves of the fixed annuity division under s. 40.04 (4) and (5) at the time the contributions or premiums were due. The employer shall collect from the employe the amount which the employe would have paid if the amounts had been paid when due, plus the corresponding interest, and shall transmit the amount collected to the department together with the balance of the amount to be paid, or the employer may elect to pay part or all of the employe amounts.

(6) Notwithstanding ss. 16.52 (2) and 40.02 (22) (a), fiscal year coding adjustments may be made for contributions received after August 1

for earnings paid for services rendered in the previous fiscal year, so that the amount of the contributions received and earnings paid are substantially reflected in the annual earnings period to which they apply.

History: 1981 c. 96, 386.

40.07 Records. (1) Notwithstanding any other statutory provision, individual personal information in the records of the department is not a public record and shall not be disclosed, unless:

(a) The information is requested by the person whose record contains the information or by the duly authorized representative of the person;

(b) The information is requested by a public employe for use in the discharge of the employe's official duties;

(c) The information is required to be disclosed under a court order duly obtained upon a showing to the court that the information is relevant to a pending court action; or

(d) The information is required to be disclosed for the proper administration of the department or to assist in locating participants or beneficiaries the department is otherwise unable to contact.

(2) Notwithstanding sub. (1) medical records may be disclosed only when a disability application denial is appealed or under a court order duly obtained upon a showing to the court that the information is relevant to a pending court action but medical information gathered for any one of the benefit plans established under this chapter may be used by any other benefit plan established under this chapter.

(3) The department shall not furnish lists of participants, annuitants or beneficiaries to any person or organization except as required for the proper administration of the department.

History: 1981 c. 96.

40.08 Benefit assignments and corrections. (1) **EXEMPTIONS.** The benefits payable to, or other rights and interests of any member, beneficiary or distributee of any estate under any of the benefit plans administered by the department, including insurance payments, shall be exempt from any tax levied by the state or any subdivision of the state and shall not be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment or other legal process except as specifically provided in this section. The exemption from taxation under this section shall not apply with respect to any tax on income.

(2) **INSURANCE PREMIUMS.** Insurance premiums shall be deducted from annuities for group insurance benefit plans as provided in s. 40.05 and, with the written consent of the annuitant,

for premiums for group life and health insurance plans provided by the city of Milwaukee to former Milwaukee teachers if the annuity is sufficient.

(3) **WAIVERS.** Any participant, beneficiary or distributee of any estate may waive, absolutely and without right of reconsideration or recovery, the right to or the payment of all or any portion of any benefit payable or to become payable under this chapter. The waiver shall be effective on the first day of the 2nd month commencing after it is received by the department or on the date specified in the waiver if later.

(4) **RETENTION OF PAYMENTS.** Unless voluntarily repaid and except as limited by sub. (10), the department may retain out of any annuity or benefit an amount as the department in its discretion may determine, for the purpose of reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25 (5) or for any money paid, plus interest at the effective rate of the fixed annuity division, to any person or estate, through misrepresentation, fraud or error. Upon the request of the department any employer shall withhold from any sum payable by the employer to any person or estate and remit to the department any amount, plus interest at the effective rate of the fixed annuity division, which the department paid to the person or estate through misrepresentation, fraud or error. Any amount, plus interest at the effective rate, not recovered by the department from the employer may be procured by the department by action brought against the person or estate.

(5) **EMPLOYER ERROR.** (a) Whenever any sum becomes due to the department from any recipient as the result of incorrect or incomplete reporting by an employer and the sum cannot be recovered from the recipient, then the employer shall be charged with the sum.

(b) Any amount determined to be due under this subsection shall be due with the next payment by the employer under s. 40.06 and shall be subject to the penalties and collection procedures provided in s. 40.06 if not paid when due.

(6) **REFUNDS.** Notwithstanding s. 20.913, the department may refund any money paid in error to the fund. When the refund is to an employe, the amount of the refund shall include any investment earnings which were credited prior to the date of the refund under other statutory provisions but this subsection shall not be construed to require crediting interest not otherwise required to be credited.

(7) **OVERPAYMENTS AND UNDERPAYMENTS.** (a) Any overpayment or underpayment of a lump sum payment under s. 40.25 or a death

benefit which does not exceed \$5, and any annuity payment error which does not exceed \$1 per month, shall not be corrected but shall be credited or debited to the employer accumulation reserve or the appropriate insurance account. If the amount of unapplied additional contributions, which would increase an annuity payment by \$1 or less, exceeds \$5 the unapplied additional contributions shall be paid to the annuitant as a lump sum.

(b) Any overpayment exceeding the limits set forth in par. (a) which proves to be uncollectible may be written off and debited to the employer accumulation reserve or the appropriate insurance account.

(8) **ABANDONMENT.** (a) Any person entitled to a benefit under this chapter who, according to the department's records, has attained the age of 70, or a beneficiary who has attained the age of 25, and who has not dealt with the department for a period of 7 years shall be presumed, unless it is shown to the contrary, to have died intestate, without heirs or beneficiary, or to have abandoned the moneys or, if the person has a known beneficiary, to have died with a beneficiary established. If the person is presumed to have died with a beneficiary established, the applicable provisions shall be invoked, on a date determined by the board, for the purpose of paying any annuity continuance or death benefit provided under this chapter.

(b) All moneys or credits in an account for a person presumed to have died intestate, without heirs or beneficiary, or to be abandoned by the person under par. (a) shall be applied, at the end of the calendar year in which notice is published under par. (c), to the appropriate employer accounts to reduce future funding requirements.

(c) The department shall publish a class 1 notice, under ch. 985, in the official state paper stating the names of persons presumed to have died intestate, without heirs or beneficiary, or whose accounts are presumed to be abandoned under par. (a), and the fact that a benefit will be paid to the respective persons listed or their respective heirs or legatees on proof of ownership, if applied for within 10 years after the date of publication of the notice.

(d) If any person files a claim within 10 full calendar years after the publication of the notice under par. (c) and furnishes proof of ownership of any amounts in an inactive account the claim shall be paid on the same basis as if no action had been taken under this section. The cost of the benefit shall be charged to the employer account credited under par. (b).

(e) Notwithstanding any other provision of the statutes any account subject to this subsection may, at the discretion of the department, be

settled by any heirs of a deceased participant or beneficiary making application, on a form approved by the department, certifying the names of any other persons not known by the applicants to be deceased and known by the applicants to have an equal or superior claim to the account and certifying that the applicants have no knowledge of the whereabouts of any of the persons so named.

(f) Publication under par. (c) is not required if the present value of the benefit to which a person would have been entitled on attainment of age 70 is less than \$100, in the calendar year of 1982 or, in each calendar year commencing after January 1, 1982, the applicable amount under this paragraph for the previous calendar year increased by the salary index for that year and ignoring any fraction of a dollar. The provisions of this subsection apply to inactive accounts subject to this paragraph as if publication had been made in the year the person would have attained age 70.

(9) **PAYMENTS OF BENEFITS TO MINORS AND INCOMPETENTS.** In any case in which a benefit amount becomes payable to a minor or to a person adjudged mentally incompetent, the department may waive guardianship proceedings, and pay the benefit to the person providing for or caring for the minor, or to the spouse, parent or blood relative providing for or caring for the incompetent person.

(10) **LIMITATIONS ON CORRECTIONS.** Service credits granted and contribution, premium, and benefit payments made under this chapter shall not be subject to correction unless correction is requested or made prior to the end of 7 full calendar years after the date of the alleged error or 3 full calendar years after January 1, 1982, whichever is later, unless the alleged error is the result of fraud. This subsection shall be in addition to and not in lieu of any other limitation on corrections. This subsection shall not be construed to prohibit correction of purely clerical errors in reporting or recording contributions, service and earnings.

(11) **ASSUMED CONSENT.** The department, its employes, the fund, the employe trust fund board and the group insurance board are held free from any liability for any money retained or paid in accordance with this section and the employe, participant or beneficiary shall be assumed to have assented and agreed to any disposition under this section of the money due.

(12) **COURT REVIEW.** Notwithstanding s. 227.15, any action, decision or determination of the board shall be reviewable only by certiorari, and any party to the certiorari proceedings may appeal the decision of the reviewing court.

History: 1981 c. 96, 391.

40.19 Rights preserved. (1) Rights exercised and benefits accrued to an employe under this chapter for service rendered shall be due as a contractual right and shall not be abrogated by any subsequent legislative act. The right of the state to amend or repeal, by enactment of statutory changes, all or any part of this chapter at any time, however, is reserved by the state and there shall be no right to further accrual of benefits nor to future exercise of rights for service rendered after the effective date of any amendment or repeal deleting the statutory authorization for the benefits or rights. This section shall not be interpreted as preventing the state from requiring forfeiture of specific rights and benefits as a condition for receiving subsequently enacted rights and benefits of equal or greater value to the participant.

(2) Any person, or if the person dies prior to applying for a benefit then any beneficiary of that person, who is a participant in the Wisconsin retirement fund or a member of either the state teachers retirement system or the Milwaukee teachers retirement fund on the day prior to January 1, 1982, and who becomes a participating employe in the Wisconsin retirement system may request, prior to application for any benefit from the system, that the amount of and eligibility for benefits from the Wisconsin retirement system be determined in accord with the laws in effect on that date but the election shall be totally in lieu of any benefit amount or eligibility provided by this act or any subsequent act.

(3) Any person who is a participant in the Wisconsin retirement fund or a member of either the state teachers retirement system or the Milwaukee teachers retirement fund prior to January 1, 1982, and who does not subsequently become a participating employe in the Wisconsin retirement system, shall continue, except as provided in s. 40.08 (8), to have the amount of and eligibility for the person's benefits determined in accord with the statutes in effect on the date the person terminated as a participating employe in the Wisconsin retirement fund or as an active member of the state teachers retirement system or Milwaukee teachers retirement fund, but the form of payment, processing procedures and accounting controls shall be determined in accord with this chapter.

(4) (a) The department shall assume, and be responsible for, all authority previously exercised by village or city officials relative to pension funds and benefits provided under ss. 61.65 and 62.13 (9), (9a) and (10), 1975 stats., except the governing body of the employer shall exercise the authority provided under s. 62.13 (9) (c) 3, first sentence, 1975 stats.

(b) The liabilities of each pension fund terminated by ch. 182, laws of 1977, shall be accounted for and paid by the Wisconsin retirement system in accord with procedures set forth in this subsection.

(c) Each employe subject to par. (g) shall make contributions to the Wisconsin retirement system in an amount equal to 4% of salary.

(d) Each employer affected by this subsection shall reimburse the Wisconsin retirement system for all payments made under par. (f) or (g) as a result of employment with that employer. Payments made under s. 40.27 are not included as payments for which the Wisconsin retirement system is to be reimbursed. The reimbursements due from the employer under this paragraph shall be offset by application of contributions made under par. (c), applied by the department at times determined by it, and by any contributions made under s. 41.60 (2) (a) 1 and 2, 1977 stats., which have not been applied prior to January 1, 1982.

(e) All amounts due under this subsection shall be paid in accordance with procedures established by the department.

(f) Each benefit being paid under s. 61.65 or 62.13 (9), (9a) or (10), 1975 stats., on March 30, 1978, shall be continued in full force and effect, on the terms and conditions under which the benefit was originally granted, regardless of whether the granting was in accordance with the law then in effect, but after January 1, 1982 each benefit shall be paid by the Wisconsin retirement system and if all or a portion of the benefit was in accord with the law then in effect, that portion of the benefit shall be subject to s. 40.27 (1). No supplemental benefit shall be paid under s. 40.27 (1) with respect to any portion of a benefit which was not granted in accordance with the law then in effect.

(g) After January 1, 1982, each member of a pension fund created under s. 61.65 or 62.13 (9), (9a) or (10), 1975 stats., who was an actively employed member of that fund on March 30, 1978 shall continue to have benefits and obligations determined in accordance with the applicable provisions of s. 61.65 or 62.13 (9), (9a) or (10), 1975 stats., but paid by the Wisconsin retirement system. The provisions of s. 40.23 (1) (f) relating to compulsory retirement shall not apply to those actively employed members.

(h) This subsection does not apply to any pension fund operated by a 1st class city in accordance with s. 62.13 (10) (h), 1975 stats.

History: 1981 c. 96.

SUBCHAPTER II

WISCONSIN RETIREMENT SYSTEM

40.20 Creation. A Wisconsin retirement system is created, including the benefits provided by this subchapter, the disability annuities provided by s. 40.63 and the death benefits provided by ss. 40.71 and 40.73. For purposes of determining an employe's eligibility for social security coverage only, the former state teachers retirement system and Milwaukee teachers retirement fund and the local police and fire pension funds established under ss. 61.65 (1), (6) and (7) and 62.13 (9) (e), (9a) and (10) (f) and (g), 1975 stats., shall continue to be considered separate retirement systems but for all other purposes the Wisconsin retirement system is a continuation of the Wisconsin retirement fund.

History: 1981 c. 96.

40.21 Participating employers. (1) Any employer shall be included within and thereafter subject to the provisions of the Wisconsin retirement system by so electing, through adoption of a resolution by the governing body of the employer. If the official notice of election to be included has been received by the department on or before November 15 the effective date of participation of the employer shall be the ensuing January 1. If the department receives the notice of election after November 15 the effective date shall be the January 1 after the ensuing January 1.

(2) Any employer who elected or was required to participate in the Wisconsin retirement fund under s. 41.05, 1979 stats., shall be included in the Wisconsin retirement system on the same basis as the employer was included in the Wisconsin retirement fund.

(3) Every employer authorized by law to employ or pay the salaries of teachers, who is not otherwise a participating employer, is a participating employer with respect to teacher employes only.

(4) Every city or village subject to ss. 61.65 and 62.13, 1975 stats., except a city of the 1st class, which is not otherwise a participating employer, is a participating employer but only with respect to present and future employes of its police and fire departments specified by ss. 61.65 (6) and (7) and 62.13 (9) (e), (9a) and (10) (f) and (g), 1975 stats.

(5) Whenever any employer is created, the territory of which includes more than one-half of the last assessed valuation of an employer which at the time of creation was a participating employer on a basis other than that specified in

sub. (3) or (4) and the employer so created assumes the functions and responsibilities of the previous employer with respect to the territory, then the employer so created shall automatically be a participating employer from its inception, but no prior service credits shall be provided for any personnel of the employer unless the new participating employer adopts a resolution as provided in sub. (1). If a resolution is adopted, no employe shall receive prior service credit for any period of service which was previously covered by a retirement system.

(6) (a) Any employer electing to be included within the provisions of the Wisconsin retirement system in accordance with this section may in the resolution and in the certified notice of election recognize 100%, 75%, 50%, 25% or none of the prior creditable service of its employes earned by the employes while employed by the employer, if the same percentage of each employe's prior creditable service is recognized.

(b) Any employer which recognizes less than all of the prior creditable service of its employes under par. (a) may adopt another resolution as provided in this section, increasing, for each person who is still a participating employe on the effective date of the increase determined under this section, the percentage of the employe's prior creditable service which is recognized to one of the higher levels provided by par. (a) provided the accumulated percentage does not exceed 100%.

(c) Whenever the percentage of recognized prior creditable service is increased as provided in par. (b), the employer contributions computed under s. 40.05 (2) shall be increased to reflect the value of the increased prior creditable service being granted, amortized over the remainder of the funding period provided for prior creditable service costs of that employer.

History: 1981 c. 96.

40.22 Participating employes. (1) Each employe currently in the service of a state agency, including permanent part-time or project employes as defined under s. 230.27 (1), or of a participating employer other than the state shall be included within the provisions of the Wisconsin retirement system as a participating employe of that state agency or employer, except as provided in sub. (4) and ss. 40.02 (54) (a) and 40.21 (3) and (4), if the employe receives earnings as payment for personal services rendered to or for the benefit of the state agency or participating employer and:

(a) Completes at least 600 hours of actual performance of duty for a state agency or other participating employer in each of 3 consecutive calendar years, if the employe was not included as a participating employe under par. (b); or

(b) Is employed with the expectation that there will be at least 600 hours of actual performance of duty per calendar year and, if a state employe on a project appointment in a project position, the expected duration of employment is at least 6 months or, for any other employe, is at least 24 months. Subject to rules of the department, any person who is employed to work at least one-third of what is considered full-time employment with that employer meets the 600-hour requirement of this paragraph and sub. (2). An employe is not excluded from coverage under the system, if otherwise qualified, because the employe's continued employment with an employer is subject to renewal of funding or availability of and assignment to a different position or to other duties.

(2) Any employe who becomes a participating employe shall continue to be a participating employe of that employer as long as the employe continues to be employed by that participating employer and has completed at least 600 hours of actual performance of duty during the prior calendar year, or is anticipated to perform 600 hours of duty during either the current or the following calendar year for the participating employer.

(3) Persons who qualify as participating employes shall be included within, and shall be subject to, the Wisconsin retirement system effective as of the following dates:

(a) On the employer's effective date of participation for any person who is an employe of that employer on the effective date if the person qualifies under sub. (1) (b).

(b) For any employe who becomes a participating employe under sub. (1) (b), except as provided in par. (a), on the first day for which the person receives earnings from the participating employer for services upon which the determination of qualification is based.

(c) For any employe who becomes a participating employe under sub. (1) (a), on the date the employe completes 600 hours of actual performance of duty in the 3rd consecutive year or the employer's effective date of participation, whichever is later.

(4) Persons shall not be included within or receive benefits from the Wisconsin retirement system for any service for which a person:

(a) Is subject to s. 40.19 (4) provided that contributions and benefits shall be paid as provided by s. 40.19 (4).

(b) Is employed under a contract involving the furnishing by the person of more than the person's personal services.

(c) Is employed as a sessional employe in the legislative reference bureau.

(d) Is a member of a retirement system of a city of the 1st class and who is an employe of a vocational, technical and adult education district created under ch. 38 on the date the district is created.

(e) Is appointed by the university under s. 36.19 as a student assistant or employe in training.

(f) Is teaching while on leave from an educational institution not a part of the university of Wisconsin system, if the person is a visiting professor, visiting associate professor, visiting assistant professor or visiting lecturer at the university, provided the employment at the university is all within 12 consecutive calendar months. If the employment at the university is continued beyond the 12-month period the person will, at the start of the 13th consecutive calendar month of employment, come under the system for future service.

(g) Contributes to the employe retirement system of the county of Milwaukee if the person was contributing to the employe retirement system of the county of Milwaukee on September 10, 1959.

(h) Is employed by a transportation system in a position which is excluded from the Wisconsin retirement system and is included in another retirement system under s. 66.944.

(5) A determination as to whether an employe has met or will meet the actual or anticipated performance of duty or other requirements of this section shall be made by the employer in accordance with rules of the department. The department may by rule identify circumstances and establish procedures under which eligibility for participation shall be based on combined employment when a person is employed by 2 or more employers.

(6) Notwithstanding subs. (1) to (5), if an employe's employment with an employer terminates after a period of service of less than 20 working days, the employe is not eligible for retirement coverage for that period of service. This subsection does not affect an employe's eligibility for insurance coverage for that period of service.

History: 1981 c. 96, 386.

40.23 Retirement annuities. (1) (a) Any participant who has attained age 55 and any protective occupation participant who has attained age 50 on or before the annuity effective date and who, regardless of cause, is separated and continues to be separated either until the annuity effective date, or until 30 days after the application is received by the department, if later, from all employment meeting the qualifications specified in s. 40.22 (1) and (2) for any participating employer, or which would meet

those qualifications except for the exclusions specified in ss. 40.02 (54) (a), 40.21 (3) and (4) and 40.22 (4), and who is not on authorized leave of absence from any participating employer, shall be entitled to a retirement annuity in accordance with the actuarial tables in effect on the effective date of the annuity after making application for a retirement annuity on a form furnished by the department.

(b) All retirement annuities shall be effective on the day following, or on the first day of a month following, the date of separation from the last participating employer by which the participant was employed, as specified by the participant in the written application for the annuity. However, the date shall not be more than 90 days prior to the date of receipt of the application by the department. The participant may specify that additional contribution accumulations shall not be applied to provide an annuity until a subsequent application is filed for an annuity to be paid from the additional contribution accumulations.

(c) No application specifying an annuity effective date later than 60 days after the date of its receipt by the department shall be accepted.

(d) An application may be filed not more than 90 days prior to the date of termination of employment but no payment shall be made until the employment has in fact terminated. The date of receipt of an application filed prior to termination is deemed to be the day after termination.

(e) Whenever it is determined that an annuity effective date is incorrect, the annuity effective date shall be corrected and any related computational and payment adjustments shall be made.

(f) Any participating employe may be retired by the employer after attainment of the employe's normal retirement date, under policies established or agreed to by the employer, except:

1. As prohibited by federal law.

2. Each elected official's and each sheriff's employment shall be continued to the end of the official's or sheriff's term of office and to the end of each subsequent term of office to which elected.

3. Notwithstanding subs. 2 and 4, each supreme court justice, court of appeals judge and circuit judge who attains age 70 shall be retired not later than the July 31 following the date on which age 70 is attained.

4. Any employer may, in a collective bargaining agreement, limit its right to require retirement.

(2) The retirement annuity in the normal form shall be an annuity payable for the life of the annuitant with a guarantee of 60 monthly payments. Except as provided in sub. (3) and s.

40.26, the initial monthly amount of the normal form annuity shall be the amount which, when added to the OASDHI benefit, equals 85% of the participant's final average earnings plus the amount which can be provided under pars. (a) and (c) and adjusted under pars. (d) and (e) or, if less shall be in the monthly amount equal to the sum of the amounts determined under pars. (a), (b) and (c) as modified by pars. (d) and (e) and in accordance with the actuarial tables in effect on the annuity effective date.

(a) The annuity which can be provided from a sum equal to 200% of the excess accruing after June 30, 1966, for teacher participants or December 31, 1965, for all other participants of

- 1) the participant's required contribution accumulation reserved for a variable annuity over
- 2) the amount to which the contributions would have accumulated if not so reserved. If item 1) is less than item 2), the annuity shall be reduced by the amount which could be provided by a sum equal to 200% of the deficiency.

(b) A monthly annuity in the normal form computed on the basis of the participant's final average earnings and creditable service, if the annuity becomes effective on or after the normal retirement date of the participant, determined by multiplying the participant's final average earnings by the participant's creditable service and the following applicable percentage:

1. For each participant for creditable service of a type not otherwise specified in this paragraph, 1.3%.

2. For each participant for creditable service as an elected official and for executive service, 1.8%.

3. For each participant, subject to Titles II and XVIII of the federal social security act, for service as a protective occupation participant, 1.8%.

4. For each participant not subject to Titles II and XVIII of the federal social security act, for service as a protective occupation participant, 2.3%.

(c) The amount, if any, which can be provided by accumulated employe and employer additional contributions credited to the participant's account.

(d) If the annuity effective date is prior to the normal retirement date of the participant, the annuity amount computed under par. (b) shall be reduced, as recommended by the actuary and approved by the board, by a percentage or percentages of the amount of the annuity for each month and any major portion of a month between the effective date of the annuity and the participant's normal retirement date.

(e) The amount of the annuity computed under par. (b) shall be reduced by the amounts, determined under s. 42.244 (4) (b) and (c),

42.246 (1) (e), 42.77 (3) (b) and (c) and 42.79 (1) (e), 1979 stats., for those teacher participants specified in those sections.

(3) The initial monthly amount of any retirement annuity in the normal form shall not be less than the money purchase annuity which can be provided by applying the sum of the participant's accumulated additional and required contributions plus an amount from the employer accumulation reserve equal to the participant's accumulated required contributions to fund the annuity in accordance with the actuarial tables in effect on the annuity effective date.

History: 1981 c. 96, 386.

40.24 Annuity options. Any participant who is eligible to receive a retirement annuity in the normal form may elect to receive the actuarial equivalent of the normal form annuity in one of the optional annuity forms prescribed in subs. (1) to (5), or in any one optional life annuity form provided by rule. The participant may also elect to receive the amount provided by accumulated additional contributions in a different optional form than the balance of the annuity. Any optional form shall be based on actuarial equivalent values with due regard to selection against the fund, shall not provide a greater monthly amount payable to others upon the death of the participant than the amount which would have been payable to the participant if the participant had continued to live and shall not be changed after the effective date of the annuity unless the participant's request for the change is received by the department within 30 days after the date the first annuity check is issued or funds are otherwise transferred.

(1) A straight-life annuity terminating at the death of the annuitant.

(2) An annuity payable for the life of the annuitant with a guarantee of 180 monthly payments.

(3) An annuity payable for the life of the annuitant, and after the death of the annuitant, monthly payments, as elected by the participant of either a) 100% or b) 75% of the amount of the annuity paid to the annuitant to be continued to the one beneficiary, for life, who was designated by the participant in the original application for an annuity.

(4) A reduced annuity payable in the normal form or any of the optional life forms provided under this section, plus a temporary annuity payable monthly but terminating with the payment payable in the month following the month in which the annuitant attains age 62 or, if earlier, on the death of the annuitant. It is the intent of this option that so far as is practicable the amounts of the life annuity and temporary annuity shall be determined so that the annui-

tant's total anticipated benefits from the fund and from his or her primary OASDHI benefit will be the same each month both before and after attainment of age 62.

(5) From accumulated additional contributions only, an annuity certain payable for and terminating after the number of months specified by the applicant, regardless of whether the applicant dies before or after the number of months specified, provided that the monthly amount of the annuity certain is at least equal to the minimum amount established under s. 40.25 (1) (a). The number of months specified shall not exceed 180 and shall not be less than 24. If the death of the annuitant occurs prior to the expiration of the certain period, the remaining payments shall be made in accordance with s. 40.73 (2) without regard to any other annuity payments payable to the beneficiary. An annuity under this subsection may be initiated prior to any other annuity amount provided under this subchapter and prior to age 55 if all other qualifications for receiving an annuity payment are met.

(6) If a participant's annuity is not effective until after the participant's normal retirement date under s. 40.02 (42) (a) to (e) and the participant elects an optional annuity form, the monthly amount of annuity provided by conversion of the benefit computed under s. 40.23 (2) (b) to the optional form elected shall not be less than the monthly amount of annuity which would have been paid had the participant retired immediately upon attaining the participant's normal retirement date under s. 40.02 (42) (a) to (e) and elected the same optional form of annuity and the same beneficiary. It shall be assumed for purposes of calculating the amount of an annuity under this subsection that all of the participant's creditable service and earnings were earned prior to the participant's normal retirement date and that the beneficiary is the age that the beneficiary was when the participant attained the participant's normal retirement date under s. 40.02 (42) (a) to (e).

History: 1981 c. 96.

40.25 Lump sum payments. (1) If all other requirements for payment of a retirement annuity are met and if:

(a) The retirement annuity in the normal form which could be provided under s. 40.23 is equal to or less than \$25 monthly for a benefit with an effective date in the calendar year of 1982 or, for a benefit with an effective date in a subsequent calendar year, the monthly amount applied under this paragraph for the previous calendar year increased by the salary index and ignoring fractions of the dollar, the then present value, including additional contributions, of the

annuity shall be paid in a single sum instead of as an annuity. The additional contribution accumulations shall not be included in determining whether a single sum should be paid if the optional form provided by s. 40.24 (5) or a lump sum under sub. (4) is selected.

(b) The retirement annuity in the normal form which could be provided under s. 40.23 from all available accumulations and credits, other than accumulations from additional contributions, is more than \$25 and less than \$60 monthly for a benefit with an effective date in the calendar year of 1982 or, for a benefit with an effective date in a subsequent calendar year, the monthly amounts applied under this paragraph for the previous calendar year increased by the salary index and ignoring fractions of the dollar, then any participant may elect to receive, in lieu of the annuity, the then present value, including additional contributions, of the annuity in a single sum.

(2) If all requirements for payment of a retirement annuity are met except attainment of age 55 or age 50 for protective occupation participants, a separation benefit may be paid, if the participant's written application for a separation benefit is received by the department prior to the participant's 55th birthday or 50th birthday for protective occupation participants, in an amount equal to the additional and employee required contribution accumulations of the participant on the date the application for a separation benefit is approved.

(3) Upon administrative approval of payment of an amount under either sub. (1) or (2) the participant's account shall be closed and there shall be no further right, interest or claim on the part of the former participant to any benefit from the Wisconsin retirement system except as provided by subs. (5) and (6). Any former participant who is subsequently employed by any participating employer shall be treated as a new participating employe for all purposes of this chapter. New accumulations of contributions and credits and the computation of any future benefits shall bear no relationship to any accumulations and credits paid as single sums under sub. (1) or (2).

(4) If all the requirements for payment of a retirement annuity or a separation benefit are met, except filing of an application, a participant may elect that the accumulation from the participant's additional contributions be paid as a lump sum in lieu of an annuity from the additional contributions.

(5) (a) Rights and creditable service forfeited under sub. (3) shall be reestablished if the participant receives the benefit resulting in the forfeiture after being discharged and is subse-

quently reinstated to a position with the participating employer by court order, arbitration award or compromise settlement as a result of an appeal of the discharge.

(b) The full amount of the benefit paid under sub. (1) or (2), plus interest at the effective rate, shall be repaid to the Wisconsin retirement system by the employer of an employe whose rights and creditable service are reestablished under par. (a) within 60 days after the effective date of the employe's reinstatement. The amount repaid by the employer under this paragraph shall be deducted by the employer from any payment due the employe as a result of the resolution of the appeal or, if that amount is insufficient, the balance shall be deducted from the employe's earnings except the amount deducted from each earnings payment shall be not less than 10% nor more than 25% of the earnings payment. If the employe terminates employment the employer shall notify the department of the amount not yet repaid, including any interest due, at the same time it notifies the department of the termination of employment, and the department shall repay to the employer the balance of the amount due from retentions made under s. 40.08 (4). The employer may charge interest at a rate not in excess of the current year's assumed rate on any amount unpaid at the end of any calendar year after the year of reinstatement.

(6) (a) A participating employe may reestablish creditable service forfeited, subject to the following conditions and requirements:

1. The participating employe must have at least 3 continuous years of creditable service under the fund at the time of application for reestablishment of creditable service under this subsection.

2. Applications for reestablishment of creditable service must include all creditable service that has been forfeited except that the number of years which may be reestablished under this subsection may not be greater than the creditable service of the participating employe at the date of application, or 10 years, whichever is smaller.

3. The participating employe applying for forfeited creditable service under this subsection shall pay to the fund an amount equal to the employe's statutory contribution on earnings under s. 40.05 (1) (a) for each year of forfeited service to be reestablished, based upon the participating employe's final average earnings, determined as if the employe retired on the date the department receives the application. The required amount shall be paid in a lump sum payment or in instalments with interest as provided by rule. No employer may pay any

amount payable under this subsection on behalf of any participating employee.

4. Upon receipt by the fund of the total payment required under subd. 3, the creditable service meeting the conditions and requirements of this subsection shall be reestablished to the account of the participating employee making the payment.

(b) Creditable service may be reestablished under this subsection if it was:

1. Forfeited because of payment of an amount under sub. (2); or

2. Forfeited because of receipt of a separation or withdrawal benefit under the applicable laws and rules in effect prior to January 1, 1982.

History: 1981 c. 96, 201; 1981 c. 386 ss. 14 to 16, 19.

40.26 Reentry into service. (1) If a participant receiving a retirement annuity or a disability annuitant who has attained his or her normal retirement date receives earnings after January 1, 1982 subject to s. 40.05 (1), or which would be subject to s. 40.05 (1) except for the exclusions specified in ss. 40.02 (54) (a), 40.21 (3) and (4) and 40.22 (4), the annuity shall be terminated and no payment shall be payable after the month in which the total earnings subject to s. 40.05 (1) received in any annual earnings period exceeds an amount equal to 6 times the participant's final average earnings, increased each January 1 after the annuity effective date by the prior year's salary index, ignoring fractions of a dollar.

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

(a) The then present value of any portion of the terminated annuity which was originally provided by employe or employer additional contributions shall be credited to the corresponding additional contribution account.

(b) The amount of the annuity payments, excluding any portion originally provided by additional contributions, which would have been paid under the terminated annuity, if the annuity had been a straight life annuity, prior to the participant's normal retirement date or prior to the annuity termination date, whichever would first occur, shall be credited to a memorandum account which is subject to s. 40.04 (4) (a) 2 and (c).

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

(3) (a) Upon subsequent retirement and application for an annuity, the annuity of a former annuitant shall be recomputed except as provided by pars. (b) and (c), as an original annuity, based upon the participant's attained age on the effective date of the recomputed annuity, in an optional form as elected by the participant under s. 40.24.

(b) If changes in the statutes after the effective date of the original annuity would result in a change in the amount of an annuity recomputed under this subsection, the statutory changes shall not apply to any benefit based on creditable service earned prior to the effective date of the original annuity and the laws in effect as of that original effective date apply.

(c) The amount of the recomputed annuity shall be reduced by the amount of annuity which could be provided, under the actuarial tables in effect on the annuity effective date, by the balance in the memorandum account established under sub. (2) (b) and that account shall be closed out.

(4) Upon subsequent termination of all participating employment of an annuitant who receives compensation subject to s. 40.05 (1), but whose compensation did not exceed the level specified in sub. (1) which would have required termination of the original annuity, any contributions made under s. 40.05 (1) or (2) (g) based on the additional employment shall upon application be paid the annuitant on the basis specified in s. 40.25 (2) and (3) without regard to the age 55 requirement and without any change in the original annuity.

History: 1981 c. 96.

40.27 Post-retirement adjustments. (1) SUPPLEMENTAL BENEFITS. Any person who received a supplemental benefit under s. 41.23, 42.49 (10) or 42.82, 1979 stats., is eligible to continue receiving a supplemental benefit in the amounts determined under s. 41.23, 42.49 (10) or 42.82, 1979 stats. Any portion of a benefit payable under s. 40.19 (4) (f) which was not granted in accordance with the law in effect at the time of the granting shall not be subject to this subsection and shall not be eligible for a supplemental benefit.

(a) Any benefit payable by virtue of this subsection in excess of the amounts payable under other provisions of this chapter shall be paid from and shall be subject to the continuation of the appropriation made by s. 20.515 (1) (a).

(b) Determinations of eligibility and the amount of any payment to be made under this subsection shall be made by the department, and shall be certified by the department for payment

in the same manner as for payments from the Wisconsin retirement system.

(c) No payment shall be made under this subsection, nor shall any right accrue under this subsection, for or after any month following termination of the annuity on which the supplement was based.

(d) Benefits under this subsection shall be payable to the surviving beneficiary, who receives an annuity, of eligible persons.

(2) FIXED ANNUITY RESERVE SURPLUS DISTRIBUTIONS. Surpluses in the fixed annuity reserve established under s. 40.04 (6) and (7) shall be distributed by the board if the distribution will result in at least a 2% increase in the amount of annuities in force, on recommendation of the actuary, as follows:

(a) The distributions shall be expressed as percentage increases in the amount of the monthly annuity in force, including prior distributions of surpluses but not including any amount paid from funds other than the fixed annuity reserve fund, preceding the effective date of the distribution. The percentage increase in any calendar year may not exceed the salary index for the previous calendar year. For purposes of this subsection, annuities in force include any disability annuity suspended because the earnings limitation had been exceeded by that annuitant in that year.

(b) Different percentages may be applied to annuities with different effective dates as may be determined to be equitable but no other distinction may be made among the various types of annuities payable from the fixed annuity reserve.

(c) The distributions shall not be offset against any other benefit being received but shall be paid in full, nor shall any other benefit being received be reduced by the distributions. The annuity reserve surplus distributions authorized under this subsection may be revoked by the board in part or in total as to future payments upon recommendation of the actuary if a deficit occurs in the fixed annuity reserves.

(d) The effective date of such a distribution shall be no earlier than the first day of the 3rd full month after the percentages are established by the board.

History: 1981 c. 96.

40.28 Variable benefits. (1) Any annuity provided to a participant whose accounts include credits segregated for a variable annuity shall consist of a fixed annuity and a variable annuity.

(a) The initial amount of the variable annuity shall be the amount which can be provided on the basis of the actuarial tables in effect on the

effective date of the annuity by the following amounts, if otherwise available:

1. The amount of the additional contribution accumulations reserved for a variable annuity as of the date the annuity begins;

2. The amount equal to 200% of employee required contribution accumulations reserved for a variable annuity as of the date the annuity begins; and

3. The amount equal, as of the date the annuity begins, to the accumulated prior service credits reserved for the participant for a variable annuity within the employer accumulation account, together with the net gain or loss credited to the accumulations.

(b) The initial amount of the fixed annuity shall be the excess of the total annuity payable, as determined under s. 40.23, over the amount of the variable annuity.

(2) Whenever the balance in the variable annuity reserve, as of December 31 of any year, exceeds or is less than the then present value of all variable annuities in force, determined in accordance with the rate of interest and approved actuarial tables then in effect, by at least 2% of the present value of all variable annuities in force, the amount of each variable annuity payment shall be proportionately increased or decreased, disregarding fractional percentages, and effective on a date determined by rule, so as to reduce the variance between the balance of the variable annuity reserve and the present value of variable annuities to less than one percent.

(3) Except as otherwise specifically provided, benefits based on variable accumulations shall be determined on the same basis and paid in the same manner and at the same time as benefits based on accumulations not so segregated insofar as practicable considering the nature of variable annuities.

History: 1981 c. 96.

40.29 Temporary disability; creditable service. (1) If a participating employee receives temporary disability compensation under s. 102.43 for any period prior to termination of employment with the participating employer which commences on or after April 30, 1980, the employee shall be:

(a) Credited with creditable service during that period on the same basis as the employee was credited with creditable service immediately prior to the commencement of the period; and

(b) Treated for all purposes of the Wisconsin retirement system, including, but not limited to, contributions and benefits, as having received the amount and rate of earnings the employee would have received if the disability had not occurred, including adjustments in the rate of

earnings of the employe made during that period in good faith.

(2) Earnings and creditable service determined under sub. (1) shall be reported by the employer to the department. The employer shall pay all employer and required employe contributions payable under this section with respect to the earnings and current service except the employer may recover from the employe's earnings paid after the employe returns to employment with the employer the amount which the employer paid on behalf of the employe which is customarily actually paid by the employe under s. 40.05 (1). The employer may not deduct the amount recoverable under this subsection from the employe's earnings at a rate greater than 5% of each payment of earnings.

(3) The board may adopt rules necessary for the administration of this section.

History: 1981 c. 96.

SUBCHAPTER III

SOCIAL SECURITY FOR PUBLIC EMPLOYEES

40.40 State-federal agreement. The secretary may, upon receipt of a certified copy of a resolution adopted by the governing body of any employer in accordance with s. 40.41 execute on behalf of the state a modification of the state-federal agreement with the secretary of the federal department of health and human services for the inclusion of a coverage group of the employes of the employer under the OASDHI system in conformity with federal regulations. The state and each employer included under the agreement or modification of the agreement shall thereafter be bound by federal regulations.

History: 1981 c. 96.

40.41 Coverage. (1) Except as provided in sub. (6), all the employes of any employer shall be included under OASDHI through adoption of a resolution by the governing body of the employer providing for the coverage and stating the effective date of coverage. All groups covered by OASDHI, under s. 40.41, 1979 stats., prior to January 1, 1982, shall continue to be covered by OASDHI. Whenever any employer is created, the territory of which includes more than one-half of the last assessed valuation of an employer which prior to creation of the new employer had adopted a resolution under this subsection, and the employer so created assumes the functions and responsibilities of the previous employer with respect to the territory, then the employes of the employer so created shall be covered from the inception of the created em-

ployer as if a resolution had been adopted under this subsection.

(2) The resolution provided for in sub. (1) may specify a coverage group comprised of persons under a retirement system which is eligible under federal regulations for inclusion under the state-federal OASDHI agreement, in which case a referendum in conformity with section 218 (d) (3) of the federal social security act shall be conducted. The governor may take any and all actions which may be required in connection with such a referendum. The agreement with the secretary of health and human services may be modified to cover the coverage group.

(3) No agreement with the federal department of health and human services may be executed for the purpose of permitting one or more individuals to transfer by individual choice from that part of a retirement system which is composed of positions of employes who do not desire coverage under OASDHI to that part of a retirement system which is composed of positions of employes who desire OASDHI coverage.

(4) Except as provided in sub. (6), all state employes, all teachers, the participating employes of all participating employers under the Wisconsin retirement system and all employes who would have become a participating employe of a participating employer except for the requirement of s. 40.22 (6) shall be included under OASDHI, notwithstanding sub. (1).

(5) Except as provided in sub. (6), employes under any retirement system included in whole or in part under OASDHI, prior to January 1, 1982, under a referendum or a choice held in conformity with section 218 (d) (3) or 218 (d) (6) of the federal social security act, shall continue to be included under OASDHI in accordance with the results of the referendum or choice, notwithstanding sub. (1).

(6) The following services shall be excluded from OASDHI coverage, and subsequent modifications of the state-federal agreement shall continue to provide for their exclusion:

(a) Services performed by persons or in positions not eligible for inclusion under federal regulations. Any exclusion under this paragraph shall not continue if federal regulations are subsequently modified to include the services.

(b) Services of a student for a school or other education system in which the student is regularly enrolled and attending classes if the services are incidental to the person's course of study at that education system.

(c) Services as a member of a board or commission, other than the governing body of an

employer for which the service is performed, when the service does not normally require actual performance of duty for more than 600 hours in each year. For purposes of this paragraph, a "board" or "commission" is a body referred to in the statutes as a board or commission.

(d) Services of an employe whose participating employment in a position covered by a specific retirement system is not covered by OASDHI by reason of eligibility for a choice provided by statute prior to January 1, 1982, but only with respect to services in a position covered by that retirement system.

(e) Services in police and fire fighter positions under a retirement system except:

1. If the services were covered under the federal OASDHI system under this section prior to the effective date of the retirement system coverage.

2. If the services have been covered under the federal OASDHI system under section 218 (m) of the federal social security act.

(f) Services in a position eligible for participation in the Wisconsin retirement system only by virtue of s. 40.22 (1) (a). This exclusion does not apply to any employe who is a teacher, who is a participating employe in the Wisconsin retirement system or whose employer has adopted a resolution under sub. (1).

History: 1981 c. 96.

SUBCHAPTER IV

HEALTH CARE BENEFITS

40.51 Coverage. (1) The procedures and provisions pertaining to enrollment, premium transmitted and coverage of eligible employes for health care benefits shall be established by contract or rule except as otherwise specifically provided by this chapter.

(2) Any eligible employe may become covered by group health insurance by electing coverage within 30 days of being hired, to be effective as of the first day of the month which begins on or after the date the application is received by the employer, or by electing coverage prior to becoming eligible for employer contribution towards the premium cost to be effective upon becoming eligible for employer contributions. Any employe who does not so elect at one of these times, or who subsequently cancels the insurance, shall not thereafter become insured unless the employe furnishes evidence of insurability satisfactory to the insurer, at the employe's own expense or obtains coverage subject to contractual waiting periods. The

method to be used shall be specified in the health insurance contract.

(3) The health insurance contract shall establish provisions by which an insured employe or dependents may convert group coverage to a nongroup policy which, at a minimum, comply with s. 632.897.

(4) The group insurance board shall establish provisions for the continuance of insurance coverage which shall, at a minimum, comply with s. 632.897.

(5) The health insurance contract shall comply with s. 632.897.

History: 1981 c. 96.

40.52 Benefits. (1) The group insurance board shall establish by contract a standard health insurance plan in which all insured employes shall participate except as otherwise provided in this chapter. The standard plan shall provide:

(a) A family coverage option for persons desiring to provide for coverage of all eligible dependents and a single coverage option for other eligible persons.

(b) Coverage for expenses incurred by the installation and use of an insulin infusion pump or other equipment or supplies in the treatment of diabetes. Coverage required under this paragraph shall be subject to the same deductible and coinsurance provisions of the plan as other covered expenses, except that insulin infusion pump coverage may be limited to the purchase of one pump per year and the plan may require the covered person to use a pump for 30 days before purchase.

(2) Health insurance benefits under this subchapter shall be integrated, with exceptions determined appropriate by the group insurance board, with benefits under federal plans for hospital and health care for the aged and disabled. Exclusions and limitations with respect to benefits and different rates may be established for persons eligible under federal plans for hospital and health care for the aged and disabled in recognition of the utilization by persons within the age limits eligible under the federal program. The plan may include special provisions for spouses and other dependents covered under a plan established under this subchapter where one spouse is eligible under federal plans for hospital and health care for the aged but the others are not eligible because of age or other reasons. As part of the integration, the department may, out of premiums collected under s. 40.05 (4), pay premiums for the federal health insurance.

(3) The group insurance board, after consulting with the board of regents of the university of Wisconsin system, shall establish the

terms of a health insurance plan for graduate assistants, and for employes-in-training designated by the board of regents, who are employed on at least a one-third full-time basis and for teachers who are employed on at least a one-third full-time basis by the university of Wisconsin system with an expected duration of employment of at least 6 months but less than 2 years.

History: 1981 c. 96, 381.

SUBCHAPTER V

DISABILITY BENEFITS

40.61 Income continuation coverage. (1)

Each eligible employe shall be insured as provided in s. 40.62, unless and until the employe executes and files with his or her employing office a written waiver of any income continuation insurance coverage, within the time limit fixed by rule, which shall be transmitted immediately to the department. The group insurance board may determine to provide a different method of enrollment than the method provided under this subsection.

(2) Any employe who has filed a waiver under sub. (1) shall not thereafter become insured unless the employe requests inclusion, on a form provided by the department. The employe requesting inclusion shall:

(a) Furnish satisfactory evidence of insurability at the employe's own expense, in which case the employe shall become insured from the date of approval of the evidence; or

(b) File an application for coverage on a form furnished by the department within 30 days of becoming eligible for a higher level of employer contributions toward the cost of the insurance, in which case the employe shall become insured from the first day of the month following receipt of the application by the department for teachers employed by the university system and from the following March 1 for all other employes.

History: 1981 c. 96.

40.62 Income continuation insurance benefits. (1)

The group insurance board shall establish an income continuation insurance plan providing for full or partial payment of the financial loss of earnings incurred as a result of injury or illness with separate provisions for short-term insurance with a benefit duration of no more than 2 years and long-term insurance covering injury or illness of indefinite duration. Employes insured under either the short-term or long-term plan shall be eligible for benefits under these plans upon exhaustion of accumulated sick leave and completion of the elimina-

tion period established by the group insurance board.

(2) Sick leave accumulation shall be determined in accordance with ss. 13.121 (4) and 36.30, 230.35 (2), 757.02 (5) and subch. V of ch. 111 and the rules of the department.

History: 1981 c. 96.

40.63 Disability annuities. (1) Any participating employe is entitled to a disability annuity from the Wisconsin retirement system, beginning on the date determined under sub. (8) if, prior to attaining his or her normal retirement date, the person:

(a) Has earned at least one-half year of creditable service in each of at least 5 calendar years not including any calendar year preceding by more than 7 calendar years the year in which the application for the disability annuity is received by the department, or has earned a total of at least 5 years of creditable service during that period of time, or, if the disability was a result of employment as a participating employe for an employer, last rendered services to a participating employer not more than 2 years prior to the date the application for the disability annuity is received by the department;

(b) Becomes unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(c) Is not entitled to any earnings from the employer and the employer has certified that it has paid to the employe all earnings to which the employe is entitled, that the employe is on a leave of absence and is not expected to resume active service, or that the employe's participating employment has been terminated, because of a disability as described in par. (b) and as a consequence the employe is not entitled to any earnings from the employer; and

(d) Is certified in writing by at least 2 licensed and practicing physicians approved or appointed by the department, to be disabled as described in par. (b).

(2) For purposes of sub. (1) a participant shall be considered a participating employe only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated and if the termination of active service for the participating employer was due to disability. For purposes of sub. (1) an elected official shall be considered to have terminated active service due to disability if a disability is determined, under sub. (1), to exist at the end of the elected official's term of office.

(3) For purposes of sub. (1) (a) only, if a participant was previously receiving a disability

annuity which was terminated, the participant is deemed to have received full creditable service for any month for which the previous disability annuity was paid.

(4) Notwithstanding sub. (1) (a) to (d) a protective occupation participant is not disqualified from receiving a disability annuity, if the participant has accumulated 15 or more years of creditable service and would attain age 55 in 60 months or less after the occurrence of disability and the medical evidence, as provided in sub. (1), establishes a disability to the extent that the participant can no longer efficiently and safely perform the duties required by the participant's position, and that the condition is likely to be permanent.

(5) The department shall make a report based on the evidence prescribed in subs. (1) to (4) as to whether a disability benefit shall be granted and the department shall submit the report to the teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers. A copy of the report and notice of the date that the report was presented, or will be presented, to the appropriate board and the board's name, shall be mailed to the applicant and to the applicant's former employer. If either the applicant or the employer wishes to contest the department's findings, he or she shall send a written request for a hearing under s. 227.07 to the appropriate board within 30 days following the presentation of the report to the board or the date the report was mailed to the applicant or former employer, whichever is later. If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's recommendation or request additional information within the time allowed for appeals, the report shall be final. If the board requests additional information the report shall be final 30 days after the board's receipt of the requested information if the board has not disapproved the report. If the report is disapproved notice of the board's action shall be sent to the applicant and the applicant's former employer. If either the applicant or the employer wishes to contest the board's action, he or she shall send a written request for a hearing under s. 227.07 to the appropriate board within 30 days following the date the notice of the board's action was mailed to the applicant or the employer.

(6) Any person entitled to payments under this section who may otherwise be entitled to payments under s. 66.191 may file with the department and the department of industry, labor and human relations a written election to waive payments due under this section and accept in lieu of the payments under this section

payments as may be payable under s. 66.191, but no person may receive payments under both s. 66.191 and this section. However any person otherwise entitled to payments under this section may receive the payments, without waiver of any rights under s. 66.191, during any period as may be required for a determination of the person's rights under s. 66.191. Upon the final adjudication of the person's rights under s. 66.191, if waiver is filed under this section, the person shall immediately cease to be entitled to payments under this section and the system shall be reimbursed from the award made under s. 66.191 for all payments made under this section.

(7) If an application, by a participant age 55 or over, for any disability annuity is disapproved, the date which would have been the disability annuity effective date shall be the retirement annuity effective date if so requested by the applicant within 60 days of the disapproval or, if the disapproval is appealed, within 60 days of final disposition of the appeal.

(8) Disability annuity effective dates and amounts shall be determined in the same manner and shall be subject to the same limitations and options as retirement annuities except that separate actuarial tables may be applied and except that:

(a) The creditable service shall include assumed service between the date the disability occurred, or the last day for which creditable service was earned, if later, and the date on which the participant will reach the participant's normal retirement date. The assumed service shall be prorated if the participant's employment was less than full time.

(b) For purposes of s. 40.23 (2) (b) and (d) only, the participant is deemed to have attained the participant's normal retirement date on the effective date of the annuity.

(c) The applicable percentage under s. 40.23 (2) (b) for an executive participating employee is 1.3% for assumed service between ages 62 and 65.

(d) If an annuity option other than the normal form is elected, the amount of the normal form disability annuity which is greater than the normal form retirement annuity to which the participant would be entitled under s. 40.23, notwithstanding the age 55 requirement, shall be a straight life annuity terminating at the death of the annuitant. The balance of the present value of the disability annuity, after providing for the straight life annuity, shall be applied to provide an annuity in the optional form elected.

(e) The annuity option provided by s. 40.24 (4) may not be elected.

(f) The date of termination of employment shall be deemed to be the last day for which the participant was paid.

(g) If processing of an application is delayed more than 12 months beyond the date the application is received by the department because of failure to receive some or all of the evidence required under subs. (1) to (4), the application shall be canceled but the applicant may reapply for a disability benefit if otherwise still eligible.

(h) If an applicant dies prior to the date a decision regarding the approval or disapproval of an application for a disability benefit becomes final under sub. (5), the application is deemed to have been approved prior to the applicant's death if:

1. The applicant was eligible for the disability benefit;

2. The applicant submitted an application for the disability benefit in the form approved by the department and the medical evidence required under sub. (1) (d); and

3. The applicant dies on or after the date which would have been the effective date of the disability benefit.

(i) For the purpose of par. (h) an applicant is conclusively presumed not eligible for a disability benefit if the application is based on an alleged disability which was the basis for a previous application which the department denied.

(9) (a) The board may require that any disability annuitant shall be examined by at least one licensed and practicing physician, designated or approved by the board, during any calendar year the annuitant is receiving the annuity. A written report of the examination in a form approved by the department which shall indicate whether or not the annuitant is still disabled as specified in sub. (1) (b), shall be filed with the department. This paragraph and par. (c) shall not apply to any annuitant who has attained the normal retirement date for the annuitant's former participant classification.

(b) If a disability annuitant, prior to attaining the normal retirement date for the annuitant's former participant classification, receives earnings or other earned income from any source whatsoever for personal services, including services performed on a contractual basis, the annuity shall be suspended, except for any amount provided by additional contributions, and no payment shall be payable after the first of the month in which the earnings or earned income received during any calendar year exceed the amount established under sub. (11), except that if payment was being made under sub. (4) the annuity may only be suspended if the annuitant is employed in a law enforcement or fire fighting capacity and then the suspension

shall be effective immediately. The suspended amount shall be reinstated on January 1 following the date of suspension, or, if earlier, on the first day of the 2nd month following the termination of personal services. An amount, which is reinstated in any calendar year, other than on January 1 of the calendar year, shall again be suspended for any subsequent month in the calendar year following a month in which the disability annuitant receives any amount of earnings or earned income for personal services. The department may request any earnings or compensation information as it deems necessary to implement the provisions of this paragraph and par. (c).

(c) The disability annuity shall be terminated and no payment shall be payable after the first of the month in which a determination is made by the department that:

1. The written physician's report required in par. (a) indicates that the annuitant has recovered from the disability so the annuitant is no longer disabled to the extent required under sub. (1) (b);

2. The annuitant refuses to submit to an examination under par. (a); or

3. The annuitant refuses to submit information regarding earnings or compensation as requested by the department.

(d) If the department terminates a disability annuity under this subsection, the department shall make a report which shall include the department's determination and the reasons for the determination. The department shall submit the report to the teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers. A copy of the report and notice of the date that the report was presented, or will be presented to the appropriate board, and the board's name, shall be mailed to the affected annuitant. If the annuitant wishes to contest the department's determination, he or she shall send a written request for a hearing under s. 227.07 to the appropriate board within 30 days following the presentation of the report to the board or the date the report was mailed to the annuitant, whichever is later. If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's determination or request additional information within the time allowed for appeals, the report shall be final. If the board requests additional information the report shall be final 30 days after the board's receipt of the requested information if the board has not disapproved the department's determination.

(10) Upon termination of an annuity in accordance with sub. (9), each participant whose annuity is so terminated shall, as of the

beginning of the calendar month following termination, be credited with additional contributions equal to the then present value of the portion of the terminated annuity which was originally provided by the corresponding type of additional contributions. Except for additional contributions, the retirement account of the participant shall be reestablished as if the terminated annuity had never been effective, including crediting of interest at the effective rate and of any contributions and creditable service earned during the period the annuity was in force.

(11) In this section "substantial gainful activity" means employment for which the annual compensation exceeds, for determinations made in the calendar year commencing on January 1, 1982, \$3,600 or, for determinations made in subsequent calendar years, the amount applied under this section in the previous calendar year increased by the salary index and ignoring fractions of the dollar.

History: 1981 c. 96, 386.

40.65 Duty disability and death benefits; protective occupation participants. (1) In this section:

(a) "Monthly salary" means the gross amount paid to a participant making a claim under this section at the time the injury occurred or disease was contracted, by the employer in whose employ the injury occurred or disease was contracted. Overtime pay may not be considered part of an employe's "monthly salary" unless the employe received it on a regular and dependable basis.

(b) "Protective occupation participant" means a participating employe, other than a county employe, who is a police officer, fire fighter, conservation warden, state forest ranger, field conservation employe of the department of natural resources who is subject to call for forest fire control or warden duty, member of the state traffic patrol, university of Wisconsin system full-time police officer, guard or any other employe whose principal duties are supervision and discipline of inmates at a state penal institution including central state hospital, excise tax investigator employed by the department of revenue, or a special agent employed by the division of criminal investigation of the department of justice.

(2) Any person desiring a benefit under this section must apply to the department of industry, labor and human relations, which department shall determine whether the applicant is eligible to receive the benefit and the participant's monthly salary. Appeals from the eligibility decision shall follow the procedures under ss. 102.16 to 102.26. If it is determined that an

applicant is eligible, the department of industry, labor and human relations shall notify the department of employe trust funds and shall certify the applicant's monthly salary. The department of industry, labor and human relations may adopt rules needed to administer this subsection.

(3) The Wisconsin retirement board shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to implement this subsection and may require a participant to submit a certified copy of his or her state or federal income tax return. The board may terminate the monthly benefit of any person who refuses to submit information requested by the board or who submits false information to the board.

(4) A protective occupation participant is entitled to a duty disability benefit as provided in this section if:

(a) The employe is injured while performing his or her duty or contracts a disease due to his or her occupation;

(b) The disability is likely to be permanent; and

(c) 1. The disability causes the employe to retire from his or her job;

2. The employe's pay or position is reduced or he or she is assigned to light duty; or

3. The employe's promotional opportunities within the service are adversely affected.

(5) (a) The monthly benefit payable to a participant under this section is 80% of the participant's monthly salary adjusted as provided in par. (b) and sub. (6).

(b) The Wisconsin retirement board shall reduce the amount of a participant's monthly benefit under this section by the amounts under subs. 1 to 6, except that the board may determine not to reduce a participant's benefit because of income related to therapy or rehabilitation. The Wisconsin retirement board may assume that any benefit or amount listed under subs. 1 to 6 is payable to a participant until it is determined to the board's satisfaction that the participant is ineligible to receive the benefit or amount.

1. Any OASDHI benefit payable to the participant or the participant's spouse or a dependent because of the participant's work record.

2. Any unemployment compensation benefit payable to the participant because of his or her work record.

3. Any worker's compensation benefit payable to the participant, including payments made pursuant to a compromise settlement under s. 102.16 (1). A lump sum worker's compensation payment or compromise settlement shall reduce the participant's benefit under this section in monthly amounts equal to 4.3 times the maximum benefit which would otherwise be payable under ch. 102 for the participant's disability until the lump sum amount is exhausted.

4. Any disability and retirement benefit payable to the participant under this chapter, or under any other retirement system, that is based upon the participant's earnings record and years of service. A reduction under this subdivision may not be greater in amount than the amount of disability or retirement benefit received by the participant. If the participant is not eligible for a retirement benefit because he or she received a lump sum payment or withdrew his or her contributions on or after the date the participant became eligible to receive a benefit under this section, the amount received or withdrawn shall reduce the participant's benefit under this section in the amount of benefit that would be payable if, on the date the amount was received or withdrawn, the full amount received or withdrawn was applied under s. 40.23 (2) (c) as additional employe contributions credited to the participant's account.

5. All earnings payable to the participant from the employer under whom the duty disability occurred.

6. All earnings payable to the participant from an employer, other than the employer under whom the duty disability occurred, and all income from self-employment, the total of such earnings and income shall reduce the participant's benefit as follows:

a. For the amount of the total that is less than 40% of the participant's monthly salary, one-third of such amount;

b. For the amount of the total that is from 40% to 80% of the participant's monthly salary, one-half of such amount; and

c. For the amount of the total that is more than 80% of the participant's monthly salary, two-thirds of such amount.

(c) The Wisconsin retirement board may not reduce a participant's benefit because of income or benefits that are attributable to the earnings or work record of the participant's spouse or other member of the participant's family, or because of income or benefits attributable to an insurance contract, including income continuation programs.

(6) The Wisconsin retirement board shall adjust the monthly salary of every participant receiving a benefit under this section using the

salary index for the previous calendar year as follows:

(a) For the purposes of sub. (5) (b) 6, annually on July 1 until the participant's death;

(b) For the purposes of sub. (5) (a), if the participant is receiving an annuity under s. 40.63 (1), annually on July 1 until the participant's death; and

(c) For the purposes of sub. (5) (a), if the participant is not receiving an annuity under s. 40.63 (1), annually on July 1 until the first July 1 after the participant's 60th birthday. Beginning on the July 1 after the participant's 60th birthday the participant's monthly salary shall be increased annually in a percentage amount equal to the percentage amount of dividend awarded under s. 40.27 (2) until the participant's death. Notwithstanding s. 40.27 (2), any benefits payable under this section are not subject to distribution of annuity reserve surpluses.

(7) (a) If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under age 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse, if the spouse was married to the participant on the date the participant was injured or contracted the disease, one-third of the participant's monthly salary as reflected at the time of death until the surviving spouse marries again.

2. To the guardian of a surviving unmarried child under age 18, \$15 per child.

3. The total monthly amount paid under subs. 1 and 2 may not exceed 65% of the participant's monthly salary as reflected at the time of death. Any reduction of benefits caused by such limitation shall be done on a proportional basis.

(b) Any person entitled to a benefit under both this subsection and ch. 102 because of the death of the same participant, shall have his or her benefit under this subsection reduced in an amount equal to the death benefit payable under ch. 102.

(8) Benefits payable under this section are not subject to subch. VII of this chapter.

(9) This section is applicable to protective occupation participants who apply for a benefit under this section on or after July 1, 1982. A participant may not apply for a benefit under this section if he or she is receiving a benefit under s. 66.191 on July 1, 1982.

History: 1981 c. 278.

Cross Reference: See 891.45 for provision as to presumption of employment-connected disease for certain municipal fire fighters.

SUBCHAPTER VI

SURVIVOR BENEFITS

40.70 Life insurance coverage. (1) Each eligible employe of an employer shall be insured under the group life insurance provided in accord with this subchapter if:

(a) The employer is a participating employer under the Wisconsin retirement system and was included in the group life insurance program by s. 40.20 (5m), 1979 stats., or the governing body of which has adopted a resolution in a form prescribed by the department to make coverage available to its employes or is the state. Coverage may also be extended by rule to employes under other retirement systems if the employer adopts a resolution as specified in this paragraph. A certified copy of the resolution shall be filed with the department and if received on or before November 15 in any year shall be effective as of the beginning of the ensuing calendar year. An employer may provide group life insurance for its employes through separate contracts in addition to, or in lieu of, the group life insurance provided by the department under this subchapter.

(b) The employe does not execute and file with the department a written waiver to be effective on a date fixed by rule, of one or more of the types of coverage established under sub. (3) or s. 40.72 (10). The group insurance board may provide a different method of enrollment than provided under this subsection.

(2) A resolution adopted under sub. (1) (a) shall take effect only if the department determines that 75% of the eligible employes of that employer shall be covered at the time the resolution is effective. If a resolution is nullified by insufficient participation, another resolution may be submitted only after a lapse of 6 months from the previous filing.

(3) Any employer may elect by resolution adopted under sub. (1) (a) to provide only the coverage provided under s. 40.72 (1), (2), (4), (5), (6), (7), (8) and (9). Alternatively employers may adopt resolutions providing all the coverages provided under s. 40.72 or providing all coverages except one or more of the coverages provided by s. 40.72 (2), (3) or (10). Employes may waive under sub. (1) (b) any type of coverage made available as an option to employers without waiving other types of coverage. The department shall determine the method of administration and the procedure for collection of premiums and employer costs.

(4) The governing body of any employer may elect to withdraw, effective at the end of the calendar year if the withdrawal resolution is

received by the department by October 1, otherwise the resolution shall be effective at the end of the next calendar year.

(5) Any employer who was previously covered under group life insurance and then rescinded the resolution under sub. (4) may reenter the plan at a later date subject to the provisions contained in this subchapter. The department may accept or reject the resolution at its discretion and may charge the employer an assessment for any post-retirement insurance liability.

(6) (a) Any employe who has filed a waiver under sub. (1), or any employe whose insurance terminates under sub. (8) shall not thereafter become insured for the coverage waived unless prior to the attainment of age 50 the employe furnishes evidence of insurability satisfactory to the insurer, at his or her own expense. If the evidence is approved, the employe shall become insured from the date of the approval.

(b) Notwithstanding par. (a), if an employe terminates all employment for participating employers under this subchapter and under subch. II and terminates his or her retirement account under s. 40.25 (1) or (2) any previously filed waiver under this section shall not be effective if the individual again becomes an employe of a participating employer under this subchapter.

(7) Unless a different method of enrollment is provided by the group insurance board under sub. (1) (b), a participating employe is deemed to have filed a waiver upon becoming eligible for group life insurance if during the 6 months subsequent to becoming eligible the employe makes no required contribution toward premiums. The constructive waiver under this subsection shall not preclude the employe from obtaining group life insurance coverage after the 6 months have elapsed if contributions were omitted as a result of employer error and the employe files with the department a written request to withdraw the constructive waiver within 30 days after the employer issues to the employe written notice of the error. No evidence of insurability for the employe shall be required and the coverage shall be effective on the date the request is received by the department.

(8) An insured employe may at any time cancel the life insurance by filing a waiver of coverage with the employing office. An insured retired employe may at any time cancel the life insurance by filing a waiver of coverage with the office of the retirement system. The waiver shall be transmitted immediately to the department. The waiver shall be effective and the insurance shall cease at the end of the calendar month which begins after the waiver is received by the appropriate office.

(9) The life insurance shall terminate as provided in the contract which shall also provide an option for an employe to convert insurance coverage upon termination of employment if covered by the insurance during the entire 6 months preceding termination or if covered by the insurance from the initial effective date for that employer, to the date of termination.

(10) The group insurance board may provide for the continuation or suspension of insurance coverage during any month in which no earnings are received during a leave of absence.

History: 1981 c. 96.

40.71 Death benefit eligibility. The following described persons are entitled to death benefits from the Wisconsin retirement system, in the form and at the times specified:

(1) The beneficiary of any participant or of any annuitant on the date of death of the participant or annuitant. For purposes of this subsection:

(a) A participant is deemed a participating employe on the date of death even though the participant is then an applicant for a retirement or disability annuity, except as provided by s. 40.63 (8) (h), if the participant's application was received by the board within 30 days after the participant ceased to be a participating employe and the participant would have been entitled to the annuity had the participant lived.

(b) If the date of death is less than one year after the last day for which earnings were paid, a participant is deemed a participating employe on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if the participating employer for which the participant last performed services as a participating employe has not filed notice of the termination of employment prior to the employe's death.

(c) If the death of a participating employe on leave of absence, other than a leave for purposes of military service, arises from employment by any employer other than a participating employer, employment is deemed to have terminated and the participant shall not be considered a participating employe on the date of his or her death.

(d) Every participant is deemed an annuitant immediately upon the effective date of the participant's annuity, or the date the application is received by the department if the participant is living on that date, whichever is later.

(e) Any annuitant whose annuity is terminated shall cease to be an annuitant as of the last day of the month preceding the last day on which the annuity is payable.

(2) Any death benefit may be paid as a beneficiary annuity, subject to s. 40.73 (3), or as a single cash sum as specified by the benefi-

ary in the application for the death benefit unless the participant prohibited payment of a single cash sum in a written notice received by the department prior to the participant's death. A prohibition on payment of a single cash sum shall not be effective if the monthly amount of the annuity would be less than the amount determined under s. 40.25 (1) (a).

(3) Whenever any death benefit is payable in a single cash sum, it shall be paid only after receipt by the department of the following:

(a) A copy of the death certificate of the participant or annuitant;

(b) A written application of the beneficiary for the benefit; and

(c) Any additional evidence deemed necessary or desirable by the department.

History: 1981 c. 96.

40.72 Life insurance benefits. (1) Except as provided in sub. (2), (3), (8) or (10), the amount of group life insurance of an insured employe under age 70 shall be \$1,000 of insurance for each \$1,000 or part of \$1,000 of the employe's annual earnings during the prior calendar year, notwithstanding any limitation of amount that may otherwise be provided by law. For persons covered initially the earnings shall be a projection on an annual basis of the compensation at the time of coverage until the date determined by the group insurance board for establishing new annual amounts of insurance.

(2) Except as provided by sub. (3), the amount of life insurance for any insured eligible employe who is 70 years of age or older or insured retired eligible employe under sub. (4) who is 65 years of age or over shall be the amount as computed under sub. (1) reduced by 25% of that amount on each birthday of the employe commencing with the employe's 65th birthday, with a maximum reduction of 75%.

(3) The maximum reduction in the amount of insurance for any insured employe to whom this subsection applies by an election under s. 40.70 (3) and for any insured state employe shall be 50%.

(4) The amount of life insurance for an employe who retires on an immediate annuity who had at least 20 years of creditable service applied in determining the amount of the annuity or had 20 years of service with the participating employer by whom employed immediately prior to retirement or who, prior to the termination of employment, has reached the employe's normal retirement date as determined for annuity computation purposes, shall be the same as if the employe had not retired and earnings had continued as at the time of retirement except as provided by s. 40.70 (3) and subs. (2) and (3). For purposes of this subchapter a person who

became an employe of the state under chapter 90, laws of 1973, section 546, as affected by chapter 333, laws of 1973, section 189b, may use service as a member of the Milwaukee county employe's retirement system to meet any service requirement under this subchapter.

(5) The amount of insurance specified under sub. (4) shall be adjusted when the person again becomes an employe of an employer participating in the group life insurance plan and while employed again the person shall pay premiums under s. 40.05 (6) for the insurance.

(6) The amount of insurance of an employe who retires on disability annuity shall be the same as if the employe had not retired and his or her earnings had continued in the same amount as at the time of his or her retirement, except as provided by subs. (2) and (3).

(7) During a period of disability in which premiums are waived under the terms of the insurance contract the amount of insurance shall be the same as if the employe had not become disabled and earnings had continued at the same amount as at the time of becoming disabled, and the contract may provide that the insurance continues during the continuance of the disability even if the person ceases to be an employe.

(8) The life insurance in effect during the previous year shall not be reduced during subsequent consecutive years of eligible employment with the same employer unless the employe elects to have the amount of life insurance recomputed under subs. (1) to (3) or waives coverage. The election shall be made under rules established by the department. This subsection is subject to the limitations of subs. (2) and (3).

(9) In addition to the insurance provided under sub. (1), insurance may be provided against accidental death and dismemberment as defined by the group insurance board in accordance with benefit schedules established by contract.

(10) Each insured state employe, and each insured employe to whom this subsection applies by an election under s. 40.70 (3), who is under 70 years of age, or 65 years of age if retired, shall be provided an amount of group life insurance in addition to that provided under sub. (1) equal to 100% of the employe's earnings rounded to the next higher \$1,000, if earnings are not in even \$1,000 increments. The employe may waive, in accord with the procedures specified by s. 40.70 either all or all except an amount equal to 50% of the employe's earnings (rounded to the next higher \$1,000 if earnings are not in even \$1,000 increments) of the additional insurance provided under this subsection. The employe may

waive the amount of insurance otherwise provided without waiving the amounts provided by this subsection.

History: 1981 c. 96, 386.

40.73 Death benefits. (1) The amount of the Wisconsin retirement system death benefit shall be:

(a) Upon the death of a participant, other than an annuitant the sum of the additional and employe required contribution accumulations credited to the participant's account on the beneficiary annuity effective date or the first day of the month in which an application for a lump sum death benefit is received. In addition:

1. For teacher participants who were members of the state teachers retirement system or the Milwaukee teachers retirement fund on June 30, 1966, the amount shall be increased by the employer contribution accumulation credited to the participant's account on or prior to June 30, 1973, plus interest at the effective rate subsequently credited to the accumulations.

2. For participants who were participants of the Wisconsin retirement fund on or prior to December 31, 1965, the amount shall be increased by the employer contribution accumulation credited to the participant's account on December 31, 1965, plus interest at the effective rate subsequently credited to the accumulations.

(b) Upon the death of an annuitant, in addition to any amounts payable by virtue of the annuity option elected by an annuitant, the amount determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the effective date of the annuity, or additional contributions not applied to provide an annuity, provided the amounts have not been previously paid out as a lump sum under s. 40.25.

(c) In lieu of the benefit payable under par. (a) or (b), upon the death of a participating employe who has attained the age of 60 years, or age 55 if a protective occupation participant, if the beneficiary to whom a death benefit is payable is a dependent of the participating employe, or a trust in which such a beneficiary has a beneficial interest, the present value on the day following the date of death of the life annuity to the beneficiary which would have been payable if the participating employe had been eligible to receive a retirement annuity beginning on the date of death and had elected to receive the annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount payable during the participant's lifetime. If there is more than one beneficiary the amount of the annuity and its present value will be determined as if the oldest of the beneficiaries were the sole beneficiary. If the death benefit

payable to the beneficiary under this paragraph would be less than the amount determined under par. (a) or (b) the death benefit shall be payable under par. (a) or (b) and this paragraph shall not be applicable to the beneficiary. An annuitant receiving an annuity only under s. 40.24 (5), which annuity was an immediate annuity, shall be deemed a participating employe for purposes of this paragraph only, but the amount payable under s. 40.24 (5) shall not be changed.

(d) Increased, upon the death of a participant who had elected the additional benefit provided by s. 42.81 (14), 1979 stats., and continued making the contributions provided for in s. 42.81 (14), 1979 stats., by an amount determined by the actuary and approved by the board as being appropriate to the level of contributions provided for in s. 42.81 (14), 1979 stats.

(e) Decreased by the balance in the memorandum account established under s. 40.26 (2) (b).

(2) (a) Upon the death, prior to the expiration of the guarantee period, of an annuitant receiving an annuity which provides a guaranteed number of monthly payments, monthly payments shall be continued until payments have been made for the guaranteed number of months. Any beneficiary under this paragraph may elect at any time to receive the then present value of the annuity in a single sum.

(b) In lieu of the continuation of monthly payments under par. (a), the then present value of the annuity shall be paid as a death benefit under sub. (1) if:

1. The estate of the annuitant is the beneficiary;

2. No beneficiary of the annuitant survives;

3. The death of the beneficiary occurs after having become entitled to receive payments under par. (a), but prior to the end of the period guaranteed;

4. The amount of the monthly payments to the beneficiary, including any amount payable under s. 40.27, is less than the amount determined under s. 40.25 (1) (a); or

5. At the death of the annuitant the remainder of the period for which payments are guaranteed is less than 12 months.

(3) (a) A death benefit may be paid as a beneficiary annuity, if the amount of the death benefit is sufficient to provide a beneficiary annuity in the normal form at least equal to the amount determined under s. 40.25 (1) (a) and the beneficiary or the participant has elected to have the death benefit paid as a beneficiary annuity.

(b) The normal form of beneficiary annuity is an annuity payable monthly for the life of the

beneficiary, with a guarantee of 60 monthly payments.

(c) Whenever any death benefit is payable in the form of an annuity, the annuity may begin on the day following the date of death of the participant or annuitant if the department has received a copy of the death certificate of the participant or annuitant, and a written application of the beneficiary for the benefit, subject to the same restrictions on effective dates as set forth for retirement annuities.

(d) The amount of any beneficiary annuity shall be that which can be provided from the death benefit, determined in accordance with the actuarial tables in effect on the effective date of the annuity.

(e) Any beneficiary who is eligible to receive a beneficiary annuity may elect to receive the annuity in any of the optional annuity forms provided for retirement annuities.

(f) Any beneficiary between ages 18 and 21 or the legal or natural guardian of a minor beneficiary may, in lieu of a life annuity, elect that the death benefit be paid in the form of a temporary life annuity, beginning on the day following the date of death of the participant or annuitant and ending with the monthly payment immediately prior to the beneficiary's 21st birthday, and a final payment, payable one month after the termination of the temporary annuity, in the amounts specified in the application, provided the amounts can be provided from the death benefit, on the basis of the actuarial tables in effect on the date of initial approval of the annuity. A beneficiary, prior to the final payment, may, if the amount of the final payment is sufficient to provide an immediate beneficiary annuity in the normal form of at least an amount equal to the amount determined under s. 40.25 (1) (a) monthly, elect to receive in lieu of the final payment an annuity commencing on the day following the date of termination of the temporary annuity, determined on the basis of the actuarial tables in effect on the date of initial approval of the annuity.

History: 1981 c. 96.

40.74 Beneficiaries. (1) Payment to 2 or more persons as joint beneficiaries shall be equal unless the participant, employe or annuitant has designated otherwise in the written designation of beneficiary on file with the department.

(2) A beneficiary may waive any benefit payable and the beneficiary shall then be determined as if the person had died prior to filing an application except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2, payment shall be made as if at least one child had survived the participant, employe or annuitant. The waiver shall be effective on the

first day of the 2nd month commencing after it is received by the department or the date specified in the waiver, if later.

(3) A designation of beneficiary may be signed and filed by a guardian when accompanied by a certified copy of an order of a circuit court approving the specific terms of the designation of beneficiary.

(4) If a participant, employe or annuitant fully terminates all coverage and closes all accounts to which a written beneficiary designation applies, the designation does not apply if the individual again becomes a participant, employe or annuitant.

(5) A designation of a testamentary trust as beneficiary shall satisfy the requirement of s. 40.02 (8) (a) 1 that a person or trust be specifically named in a written designation of beneficiary whether the will establishing the trust is written before or after the designation of beneficiary is received by the department. If, however, a designation specified the date or otherwise identified a specific will, the designation shall not apply if the will is not the last will and testament of the participant, employe or annuitant.

History: 1981 c. 96.

SUBCHAPTER VII

DEFERRED COMPENSATION PLANS

40.80 State deferred compensation plan.

(1) The board shall select and contract with deferred compensation plan providers to be used by state agencies.

(2) The board shall:

(a) Determine the requirements for and the qualifications of the deferred compensation plan providers.

(b) Approve the terms and conditions of the proposed contracts for administrative and investment services.

(c) Determine the procedure for the selection of the deferred compensation plan providers.

(d) Approve the terms and conditions of model salary reduction agreements which shall be used by each state agency.

(e) Require as a condition of the contractual agreements entered into under this section that approved deferred compensation plan providers shall provide service to state agencies only as approved by the board.

(f) Require as a condition of the contractual agreements entered into under this section that the deferred compensation plan providers shall reimburse the department, to be credited to the administrative account of the public employe trust fund in s. 40.04 (2), for any costs incurred

directly or indirectly by the department in soliciting, evaluating, monitoring and servicing deferred compensation plans.

(3) Any action taken under this section shall apply to employes covered by a collective bargaining agreement under subch. V of ch. 111.

History: 1981 c. 187.

40.81 Deferred compensation plan authorization. (1) An employer other than the state may provide a deferred compensation plan for its employes and may use the procedures and deferred compensation providers approved by the board under s. 40.80. An employer, or 2 or more employers acting jointly, may also elect under procedures established by the employer or employers to contract directly with a deferred compensation plan provider to administer a deferred compensation plan or to manage any compensation deferred under the plan.

(2) This section does not restrict a local government employer from entering into deferred compensation plans if the local government employer otherwise has authority to do so.

(3) Any action taken under this section shall apply to employes covered by a collective bargaining agreement under subch. IV of ch. 111.

History: 1981 c. 187, 391.

40.82 General provisions. (1) Any part of gross compensation deferred under a deferred compensation plan established under this subchapter which would have been treated as current earnings or wages if paid immediately to the employe shall be treated as current earnings or wages for purposes of the federal social security act or any retirement, pension, or group insurance benefit plan provided by the department.

(2) Compensation which is withheld under a deferred compensation plan contract between an employer and an employe may be invested by the employer or a person other than the employer who is authorized by contract to administer the funds. The employer may determine the types of investments in which the deferred compensation funds may be invested. The deferred compensation funds may be invested and reinvested in the same manner provided for investments under s. 881.01 (1).

History: 1981 c. 187.

SUBCHAPTER VIII

EMPLOYMENT OF RETIRED EMPLOYES

40.90 Definitions. In this subchapter:

(1) "Elected official" means:

(a) A supreme court justice, court of appeals judge, circuit court judge or a state, county, municipal, school district or other public official elected by the vote of the people; or

(b) A person appointed as provided in ch. 17 to fill a vacancy in a position as specified in par. (a).

(2) "Governmental unit" means the state or any other unit of government or instrumentality of 2 or more units of government within the state.

(3) "Pay" means the gross amount paid to an employe as salary or wages for personal services rendered to or for a governmental unit, including amounts provided through deferred compensation or tax shelter agreements but excluding overtime compensation. For the purposes of this subsection, the gross amount paid shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, and charitable contributions or similar amounts.

(4) "Retirement benefit" means a series of periodic payments payable on retirement of an employe under this chapter or chapter 201 or 396, laws of 1937. Retirement benefit does not include any benefit paid under s. 40.65 or any portion of a benefit derived from voluntary additional contributions by the employe. For the purposes of this subsection, the amount of retirement benefit shall be determined prior to any deductions for taxes, insurance premiums, or other deductions which reduce the amount of benefit actually paid.

History: 1979 c. 38; 1981 c. 96 ss. 27, 28, 67; 1981 c. 278.

40.91 Wages reduced to offset retirement benefit. (1) Notwithstanding any other law, an employe who is occupying a position for which the rate of pay per month is over the dollar base and who also receives retirement benefits shall have his or her gross monthly pay reduced, but not below the dollar base, by the lesser of:

(a) The amount of the gross monthly retirement benefits the employe receives; or

(b) The amount determined by dividing the product of the gross monthly pay which is in excess of the dollar base times the monthly retirement benefit by the dollar base.

(2) For the purpose of sub. (1), the dollar base is \$1,667 for calendar year 1981 and for each subsequent calendar year is the dollar base applied for the previous calendar year increased by the salary index.

(3) (a) For purposes of determining the reduction ratio provided by sub. (1) where the rate of pay is established on some basis other than monthly, the following are equivalent to one month.

1. Hourly rate multiplied by 173.

2. Daily rate multiplied by 21.63.

3. Weekly rate multiplied by 4.33.

4. Biweekly rate multiplied by 2.16.

(b) Where the pay periods of a governmental unit are more frequent than monthly, the governmental unit shall convert the pay by the equivalents provided in par. (a) before determining any reduction under sub. (1).

(4) If an employe receives pay from 2 or more governmental units for the same employment the total amount of pay received by the employe from all the governmental units may not exceed the amount provided by sub. (1). The offset against an employe's pay under sub. (1) shall be applied by the governmental unit paying the greater portion of an employe's compensation. If all government units pay an equal portion of the pay each shall apply an equal portion of the offset under sub. (1).

History: 1979 c. 38; 1981 c. 96.

NOTE: Chapter 38, laws of 1979, which created this section, gives the legislative purpose in section 1.

40.92 Retirement benefit; notice. (1) An employe shall give or mail written notice of information concerning a retirement benefit and the pay the employe receives which is necessary to a determination of compliance with s. 40.91 to the person designated by sub. (2):

(a) Within 10 days after commencing employment with a governmental unit or after receipt of notice that a retirement benefit is to be paid, whichever is later.

(b) Within 10 days after receiving information which renders information previously provided under this section incorrect.

(c) Within 30 days after this subchapter first becomes applicable to the employe under s. 40.96.

(2) An employe shall give or mail written notice under sub. (1) to:

(a) The department.

(b) To the clerk of each governmental unit other than the state from which the employe receives pay or if there is no clerk, to an officer, director or managing agent other than the employe.

(c) If the employe is not an elected official, to the appointing authority.

(3) An employe other than an elected official who violates this section may be removed, suspended without compensation, reduced in compensation or discharged in the manner provided by law.

(4) An employe who knowingly violates this section is subject to a civil forfeiture of not more than \$200 or an amount equal to the pay received in excess of the amount authorized under this subchapter, whichever is greater. The civil

forfeiture provided by this subsection is in addition to any amounts recoverable under s. 40.93.

(5) The governmental unit of any appointing authority who knowingly pays or causes to be paid to any employe subject to this subchapter an amount in excess of the amount authorized by s. 40.91 is subject to a civil forfeiture of not more than \$200 or an amount equal to the excess amount paid to the employe, whichever is greater. The governmental unit may bring civil action against the appointing authority to recover the amount of forfeiture paid, and may remove, suspend or reduce the compensation of an appointing authority who is not an elected official who knowingly made or authorized the excess payments.

History: 1979 c. 38.

40.93 Enforcement. (1) A retirement system established under this chapter or under chapter 201 or 396, laws of 1937, and a governmental unit shall promptly furnish to the department or a governmental unit, on request, the information available to it which relates to a retirement benefit or compensation paid to an employe which is necessary to determine compliance with this subchapter.

(2) A governmental unit may bring a civil action to recover:

(a) Pay paid to an employe in violation of s. 40.91; or

(b) Pay intentionally paid, with the knowledge of the employe, to offset the limit imposed by s. 40.91.

(3) The department of justice may bring a civil action, to recover, on behalf of a governmental unit, an amount due under sub. (2) if:

(a) The department so requests; and

(b) The governmental unit fails to commence an action within 60 days after receiving written notice from the department that an amount may be recovered under sub. (2).

(4) An action under sub. (2) or (3) shall be commenced within 6 years after the cause of action accrues or be barred.

History: 1979 c. 38; 1981 c. 96 s. 67.

40.94 Department; powers. (1) The secretary may promulgate rules necessary to the administration of this subchapter.

(2) The secretary shall administer this subchapter and may issue enforceable orders to any agency of the state on all matters relating to the administration, effect and enforcement of this subchapter.

(3) If any government unit other than the state violates s. 40.91 or 40.93 (1), the secretary may certify to the department of administration that the government unit is not in compliance and the department of administration shall withhold any apportionment of state aid or taxes of any kind payable to the government unit after receipt of the certificate until the department certifies the government unit is in compliance.

History: 1979 c. 38.

40.95 Reduction not to affect benefit programs. For the purpose of programs administered by the department under this chapter it is assumed that the amount of earnings of an employe is the amount payable if no reduction were required under this subchapter.

History: 1979 c. 80; 1981 c. 96.

40.96 Applicability. (1) This subchapter applies to pay received by an employe after November 1, 1979, except as provided by subs. (2) and (3).

(2) Except as provided by sub. (3), this subchapter applies to pay received by an employe who is a public officer for the purposes of article IV, section 26 of the constitution only after the public officer commences a term of office after November 1, 1979.

(3) This subchapter applies to every judge of a court of record and justice of the supreme court on and after the date that any justice of the supreme court or judge of a court of record commences a term of office after November 1, 1979.

History: 1979 c. 38.