

WISCONSIN STATE  
LEGISLATURE COMMITTEE  
HEARING RECORDS

1993-94

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on  
Veterans and  
Military Affairs  
(AC-VMA)

Sample:

Record of Comm. Proceedings ... RCP

- 05hr\_AC-Ed\_RCP\_pt01a
- 05hr\_AC-Ed\_RCP\_pt01b
- 05hr\_AC-Ed\_RCP\_pt02

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

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➤ Committee Hearings ... CH

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➤ Committee Reports ... CR

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➤ Executive Sessions ... ES

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➤ Hearing Records ... HR

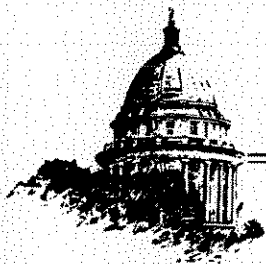
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## TERRY M. MUSSER

State Representative  
92nd Assembly District

### TESTIMONY IN SUPPORT OF SENATE BILL 489

February 2, 1994

Good Morning Senator Huelsman and Committee Members. Thank you for holding a public hearing on Senate Bill 489.

Often times the legislature faces legislation which is referred to as "adjustment" legislation. It is the aftermath of legislation passed in a prior floor period and a correction must be made to execute the intent of the new law.

Senate Bill 489 is simple adjustment legislation for nine Wisconsin National Guard Technicians.

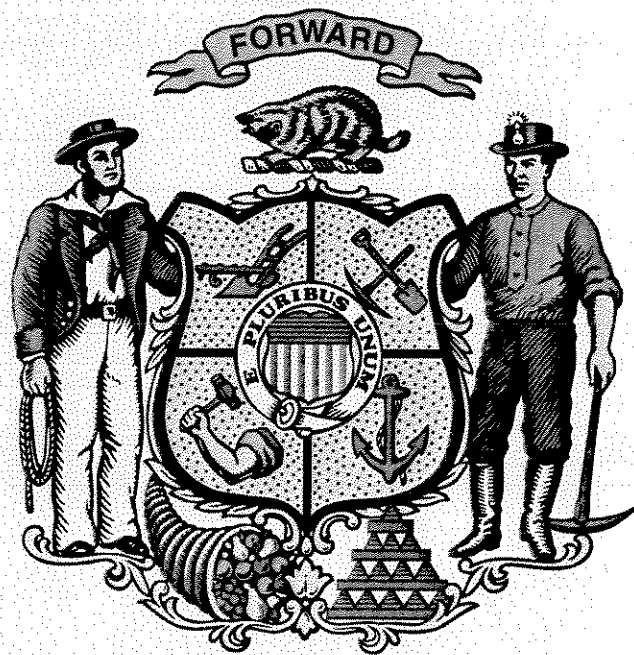
In 1966 Wisconsin National Guard Technicians were converted from federal to state employees and in 1971 they were granted creditable service under the Wisconsin Retirement Fund for their employment before 1966.

When state employees were granted the right to convert their accumulated sick leave to post-retirement health insurance premiums, an omission occurred. Nine National Guard Technicians, did not receive credit for their accumulated unused sick leave prior to 1966, during the period they were federal employees.

Senate Bill 489 corrects that omission and will entitle these citizens to benefits equal to that which all state employees receive. This legislation creates fairness.

Senate Bill 489 is legislation that is honorable for the nine deserving citizens that it will affect.

Thank you and I strongly urge you to recommend this bill for passage.





## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847

March 22, 1994

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 489: Accumulated Sick Leave Conversion Credit for Persons Who Served as National Guard Technicians Prior to 1966

Senate Bill 489 would permit certain persons hired as National Guard technicians prior to 1966 to apply for and receive credit for any unused sick leave earned for years of service prior to 1966. The bill was referred to the Joint Survey Committee on Retirement Systems, which found that the bill reflected good public policy and recommended its passage on a vote of 8-1. The bill was then referred to the Senate Committee on Judiciary and Insurance, which recommended passage on a vote of 6-1.

### BACKGROUND

Under provisions of Chapter 323, Laws of 1965, National Guard technicians were designated state employes and were made eligible, commencing January 1, 1966, for participation under the Wisconsin Retirement Fund, a predecessor to the current Wisconsin Retirement System (WRS). From that date forward, such employes began earning creditable service for retirement benefit purposes. As state employes, such employes also became eligible for annual sick leave credits which, if unused, could be accumulated from year to year. Subsequently, provisions of Chapter 91, Laws of 1971, granted these National Guard technicians retroactive service credit for retirement purposes only for all service earned in Wisconsin prior to January 1, 1966. This grant of retroactive retirement credits did not include the grant of any sick leave credits for that same period of service.

Later during that same legislative session, Chapter 214, Laws of 1971, established the accumulated sick leave conversion credit program (ASLCC), effective July 1, 1972. In general, the ASLCC program permits for state employes the unlimited accumulation of unused sick leave time from year to year and the conversion of this accumulated time upon retirement, at the employe's final hourly base rate, into "credits" used to pay for the retiree's state group health

insurance premiums. Each month, the annuitant's state group health insurance premium costs are subtracted from the account. This procedure continues until the earlier of exhausting the account or the death of the annuitant (unless there is a surviving insured dependent, in which case the payments can continue until the earlier of the exhausting of the account or the death of the insured dependent). There is no "cash value" for the benefit, and an employe may not withdraw money from the account. Currently, the cost of the ASLCC program is supported through a 2.1% employer-paid state payroll contribution.

Since no retroactive state sick leave benefits were ever granted to National Guard technicians for any service in Wisconsin prior to the time such persons were made state employes (January 1, 1966), there were no credits from that period which could subsequently be converted, upon retirement, under the ASLCC program.

## **SUMMARY OF THE BILL**

Senate Bill 489 would grant accumulated sick leave credits for National Guard technicians for any service performed in Wisconsin prior to January 1, 1966, provided the individual is either a currently participating employe under the WRS or terminated all creditable service after June 30, 1972 (the date after which the ASLCC program came into existence). The bill would also provide that if the eligible employe is deceased, the additional benefit would accrue to the surviving insured dependent of the eligible employe.

The eligible employe or surviving insured dependent would be required to submit to the Department of Employee Trust Funds (ETF), on a form approved by it, no later than the last day of the 6th month following publication of the bill, an application for the conversion. The application would have to include evidence satisfactory to ETF to establish the applicant's rights and the amount of such uncredited sick leave eligible for conversion. The accumulated sick leave would be converted for an eligible employe at his or her base pay rate immediately prior to termination of all creditable service. The conversion would occur on the later of the last day of the second month following receipt of the application or the last day of the second month after the date on which the employe or surviving insured dependent may elect to delay under current law the initiation of deductions from the credits (up to 10 years in certain instances).

The bill would also require ETF to separately account for any premium payments paid as a result of the bill. These benefits would be paid from a new GPR-funded sum sufficient appropriation created under ETF. Provisions of Article VI, Section 26 of the Wisconsin Constitution bar granting any extra compensation to any public officer, agent, servant or contractor after the services have been rendered. However, this constitutional provision has been amended so that it does not forbid the payment of post-retirement benefit supplements to any annuitant provided the amounts are funded exclusively from general purpose revenues. The Legislature must also adopt any such provision by a three-fourths vote of all members elected to both houses.

It may be noted that from time to time the Legislature has provided GPR-funded post-retirement benefit supplements. These actions have been based on the recognition that the impact of inflation over time reduces the value of annuities being paid to retirees, particularly those who have been retired for a long period of time. Such benefit supplementation actions have always been taken to increase the amount of an annuity being received. In discussions with ETF staff, they did not know of a prior instance in which a new benefit rather than simply an increased payment was extended retroactively to an annuitant who did not otherwise qualify for the benefit at the time of retirement. Where actual benefit improvements have been authorized in the past, they have applied only to currently active participants under the WRS and not to current annuitants.

### **FISCAL EFFECT**

Based on information provided by the Department of Military Affairs (DMA), 14 National Guard technicians were converted to state service on January 1, 1966. Subsequently, under the terms of Chapter 91, Laws of 1971, extending retroactive state retirement credit to such employes for service performed prior to 1966, a total of 91 years of additional creditable service was claimed. The fiscal estimate prepared by the staff of the Joint Survey Committee on Retirement Systems assumed that each National Guard technician would have accumulated six unused sick days annually during each year of service prior to 1966. With 91 years of creditable retirement service granted for that period to such employes, this would equate to a total of 4,368 hours of unused sick leave which could be converted to accumulated sick leave credits under the bill. The fiscal estimate further assumed a final base pay rate of \$20 per hour. However, DMA indicates that a National Guard technician with 26 or more years of service would currently have an hourly rate of \$17.45. Using this base pay figure, the resulting total value of the new credits is estimated to be \$76,222.

For eligible former National Guard technicians who are WRS annuitants (or their eligible insured dependents, if the annuitant is deceased), the monthly premium payments would have to be funded from the new GPR sum sufficient appropriation under ETF. The DMA has determined that seven of the 14 eligible National Guard technicians are either annuitants or deceased. If it is assumed these seven individuals had rights to half the value of the new credits, those credits would be valued at approximately \$38,100. Further, if it is assumed that these seven individuals (and insured dependents) enrolled in the standard plan with family coverage (with two Medicare eligibles), it is estimated that the maximum draw on the GPR sum sufficient would be \$25,200 GPR annually. This draw would continue until the value of the newly provided credits was exhausted, approximately 18 months under this scenario. As a practical matter, however, most eligible annuitants would likely have available post-1966 ASLCC program balances which would be drawn down before any GPR expenditures were charged.

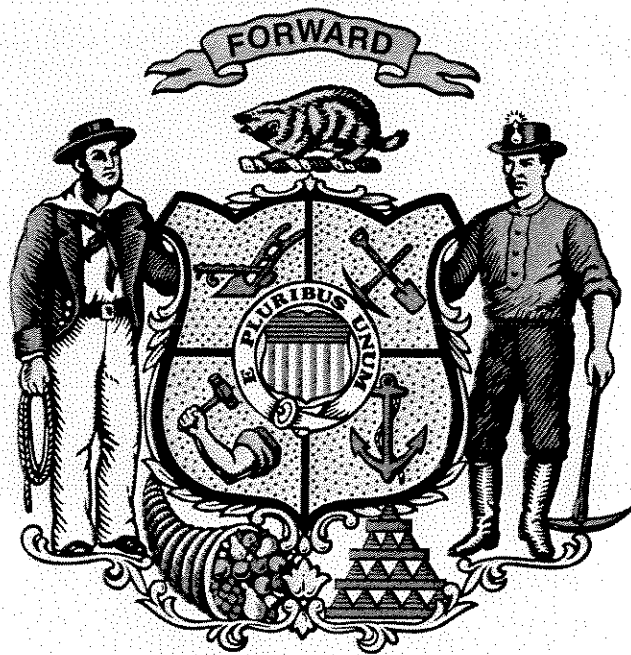
For the seven eligible National Guard technicians who are still active participants under the WRS, the remaining costs of the new credits (estimated at approximately \$38,100) would be charged to the current ASLCC program reserves where those costs would be added to the

unfunded liability of the program which would be amortized through state payroll contributions over the next 29 years.

### **TECHNICAL AMENDMENT**

As the bill is currently drafted, the entire amount of any accumulated sick leave conversion credits granted could be construed as being payable entirely from the new GPR sum sufficient appropriation. The constitutional requirement that post-retirement benefit increases be funded from general purpose revenues applies only to providing additional benefits to current annuitants. Eligible National Guard technicians who are active WRS participants would have their additional credits funded from the existing program's reserves and would not require GPR funding. A technical amendment should be adopted to clarify that the GPR sum sufficient appropriation would be used only to fund the new conversion credits of eligible National Guard technicians (or their surviving insured dependents) who retired prior to the general effective date of the bill.

Prepared by: Tony Mason







State of Wisconsin / DEPARTMENT OF MILITARY AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

P O BOX 8111  
MADISON 53708-8111  
TELEPHONE 608 242-3000  
DSN 724-3000

WING-HR

9 November 1994

MEMORANDUM FOR Donald D. Erickson, 203 W. Lakeview Avenue, Madison, WI 53716


SUBJECT: Former National Guard Technicians

1. Listed below are the former National Guard Technicians who converted from Technician status to State of Wisconsin employment prior to 1 January 1969 and the hours of earned sick leave credited at the time of that conversion.

Donald D. Erickson	875 hours
Lewis C. Greenelsh	670 hours
Donald O. Ross	544 hours
James J. Lison	540 hours
Donald O. Boe	334 hours
James A. Maynard	237 hours
Leo M. Skille	72 hours
Vincent T. Fitzgerald	250 hours (est.)

2. Official records of this earned, unused sick leave as National Guard Technicians are on file at this office for any verification needed.

FOR THE ADJUTANT GENERAL:

  
ROGER L. BRILL  
COL, GS, WIARNG  
Dir, Human Resources

Name/Social Security Number - Former National Guard Technicians	Years as Technician	Current Status	Actual or Projected Retirement Date	Current Age	Earned/Unused Sick Leave Hours	Estimated Conversion Dollars	Phone Number	Home Address/ Place of Employment
Donald D. Erickson 397-22-6084	14	Retired	1/4/90	66	875	\$17,500	222-5876	203 W. Lakeview Ave. Madison, WI 53716 Retired
Lewis C. Greenelsh 520-18-7818	8	Retired	1/2/87	70	670	\$10,050	(307) 324-7038	162 El Rancho Dr. Rawlings, WY 82301 Retired
Donald O. Ross 399-30-2862	8	State Employee	2000	60	544	\$10,880	222-6808	5209 Academy Drive Madison, WI 53716 UW Madison, Engineering
James J. Lison 387-14-7207	5	Retired	4/28/83	74	540	\$12,960	833-1202	310 Yosemite Trail Madison, WI 53705 Retired
Donald O. Boe 389-28-7404	5	State Employee	1997	63	334	\$7,682	271-8629	1402 Winslow Lane Madison, WI 53711 UW Madison, Physical Plant
James A. Maynard 387-38-9375	3	State Employee	2005	54	237	\$5,451	274-2855	5770 Devoro Road Madison, WI 53711 UW Madison, Space Science
Leo M. Skille 396-26-2007	1	Retired	3/19/93	66	72	\$1,440	271-4780	5145 Loruth Terrace Madison, WI 53711 Retired
Vincent T. Fitzgerald 387-38-9746	3	State Employee	2005	54	250 (est.)	\$5,000	271-6328	1118 Starlight Drive Madison, WI 53711 UW Madison, Chemistry

## Conversion Time-frame Data Chart

Four of the eight state employees have already retired. They would need the following amount of sick leave conversion dollars in the year indicated (year is based on when other accumulated hours of converted sick leave will be used up).

Name	No. Hours	Hourly Rate	Total Dollars	Projected Year Dollars Needed
Erickson	875	\$20	\$17,500	1996
Greenelsh	670	\$15	\$10,050	1999
Lison	540	\$24	\$12,960	2001
Skille	72	\$20	\$1,440	2009
<b>Total Dollars</b>			<b>\$41,950</b>	

Four have not yet retired. They would be converting the following hours of earned sick leave to pay for health insurance premiums at about the time-frames shown.

Name	No. Hours	Hourly Rate	Total Dollars	Planned Retirement Year
Boe	334	\$23 (est.)	\$7,682 (est.)	1997
Fitzgerald	250 (est.)	\$20 (est.)	\$5,000 (est.)	2005
Ross	544	\$20 (est.)	\$10,880 (est.)	2000
Maynard	237	\$23 (est.)	\$5,451 (est.)	2005
<b>Total Dollars</b>			<b>\$29,013 (est.)</b>	

**Total Conversion Dollars Needed \$79,963 (est.)**

(4) This section shall supersede any provision of law in conflict therewith but shall not diminish the rights and privileges of employes appointed to the unclassified service from the classified service prior to April 30, 1972.

History: 1971 c. 270 s. 69; Stats. 1971 s. 16.27; 1973 c. 12; 1975 c. 189, 421; 1977 c. 196 ss. 56, 130(5); 1977 c. 273; Stats. 1977 s. 230.33; 1983 a. 27 s. 2200(15); 1991 a. 269.

**230.335 Rights of unclassified division administrators.** If any employe in a classified position of division administrator is made unclassified under chapter 196, laws of 1977, and if the incumbent division administrator is not thereafter appointed to such position, or if the incumbent is hired and subsequently terminated for any reason except just cause, the incumbent division administrator shall have appointment rights, including bumping if necessary, to a comparable or lower level position which is within the agency wherein the division administrator position is located. The incumbent shall have 90 days after notice of termination to exercise such appointment rights.

History: 1977 c. 196.

**230.337 Rights of employes: corrections or parole.** (1) Except as provided in sub. (2), if the position of any employe who serves in a classified position in the department of health and social services on January 1, 1990, is transferred and is unclassified under 1989 Wisconsin Act 31, and if the incumbent to the position is not thereafter appointed to the unclassified position, or if the incumbent is appointed to the unclassified position and subsequently terminated for any reason except just cause, the incumbent shall have restoration rights and reinstatement privileges, including the right of displacement if necessary, to a position having a comparable or lower pay rate or range for which the person is qualified in the department of corrections or the division of hearings and appeals in the department of administration. In case of termination, the incumbent shall have 90 days after notice of termination to exercise the rights and privileges.

(2) If any incumbent member of the parole board in the office of the secretary of health and social services on January 1, 1990, in a classified position is not appointed to the parole commission created by 1989 Wisconsin Act 31, or if the incumbent member is appointed to the commission and subsequently terminated for any reason except just cause, the incumbent member shall have restoration rights and reinstatement privileges, including the right of displacement if necessary, to a position having a comparable or lower pay rate or range for which the person is qualified which is within the department of corrections, as created by 1989 Wisconsin Act 31, or the department of health and social services. In the case of termination, the incumbent shall have 90 days after notice of termination to exercise the rights and privileges. The rights and privileges granted under this subsection are subject to the terms of any collective bargaining agreement that covers the incumbent parole board members.

History: 1989 a. 31, 107.

**230.34 Demotion, suspension, discharge and lay-off.** (1) (a) An employe with permanent status in class or an employe who has served with the state or a county, or both, as an assistant district attorney for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

(am) If an employe fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employe. If an employe fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 5 consecutive working days, the appointing authority shall consider the employe's position abandoned and may discipline the employe or treat the employe as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employe in writing that the employe is being treated as having effectively resigned as of the end of the last day worked.

(ar) Paragraphs (a) and (am) apply to all employes with permanent status in class in the classified service and all employes who have served with the state or a county, or both, as an assistant district attorney for a continuous period of 12 months or more, except that for employes specified in s. 111.81 (7) (a) in a collective bargaining unit for which a representative is recognized or certified, or for employes specified in s. 111.81 (7) (b) or (c) in a collective bargaining unit for which a representative is certified, if a collective bargaining agreement is in effect covering employes in the collective bargaining unit, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement.

(b) No suspension without pay shall be effective for more than 30 days. The appointing authority shall, at the time of any action under this section, furnish to the employe in writing the reasons for the action.

(c) The secretary shall establish guidelines for uniform application of this authority among the various agencies.

(2) Employes with permanent status in class in permanent, sessional and seasonal positions in the classified service and employes serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employes in the classes used for layoff, are terminated.

(a) The order of layoff of such employes may be determined by seniority or performance or a combination thereof or by other factors.

(b) The administrator shall promulgate rules governing layoffs and appeals therefrom and alternative procedures in lieu of layoff to include voluntary and involuntary demotion and the exercise of a displacing right to a comparable or lower class, as well as the subsequent employe right of restoration or eligibility for reinstatement.

(2m) Employes in positions funded by nonstate funds made available contingent on special employe eligibility requirements such as length of prior unemployment, specific occupational disadvantages or need for remedial work experience, shall be exempt from inclusion with the employes whose positions are in classes considered for layoff under sub. (2). In the case of reduction in force in such nonstate funded positions, layoffs and layoff procedures established pursuant to the rules of the administrator may be limited to employes whose positions are dependent upon specific funding contingencies.

(3) The appointing authority shall confer with the administrator relative to a proposed layoff a reasonable time before the effective date thereof in order to assure compliance with the rules.

(4) Resignations shall be regulated by the rules of the secretary.

History: 1971 c. 270 ss. 61, 76; Stats. 1971 s. 16.28; 1975 c. 189, 200; 1977 c. 196 ss. 56, 130(3), (5); 1977 c. 273; Stats. 1977 s. 230.34; 1979 c. 221; 1981 c. 140; 1983 a. 27 s. 2200(15); 1989 a. 31.

On an appeal from discharge the appointing officer has the burden of persuasion that the discharge was for a just cause and the facts must be established to a reasonable certainty by the greater weight or clear preponderance of the evidence. *Reinke v. Personnel Board*, 53 W (2d) 123, 191 NW (2d) 833.

In deciding the issue of cause for termination, it is necessary to determine the specific requirements of the individual governmental position. *Safransky v. Personnel Board*, 62 W (2d) 464, 215 NW (2d) 379.

Trial court erroneously applied evidentiary standards required in discharge cases to review of layoff case. *Weaver v. Wis. Pers. Bd.* 71 W (2d) 46, 237 NW (2d) 183.

Public employment is a property right for those given tenure by operation of civil service regulations or laws. *Vorwald v. School Dist. of River Falls*, 167 W (2d) 549, 482 NW (2d) 93 (1992).

**230.35 State office hours; standard workweek; leaves of absence; holidays.** (1) (a) Except as provided in subs. (1m) and (1r), appointing authorities shall grant to each person in their employ, except limited-term employes, based on accumulated continuous state service, annual leave of absence without loss of pay at the rate of:

1. Eighty hours each year for a full year of service during the first 5 years of service;

2. One hundred twenty hours each year for a full year of service during the next 5 years of service;

2m. One hundred thirty-six hours each year for a full year of service during the next 5 years of service;

3. One hundred sixty hours each year for a full year of service during the next 5 years of service;

3m. One hundred seventy-six hours each year for a full year of service during the next 5 years of service;

4. Two hundred hours each year for a full year of service after 25 years of service.

(b) An employe, with the approval of his or her appointing authority, may anticipate the annual leave which he or she could earn during the current calendar year except that no employe shall be eligible to take annual leave until he or she has completed the first 6 months of a probationary period for an original appointment.

(c) When the rate of annual leave changes during the 5th, 10th, 15th, 20th or 25th calendar year, the annual leave for that year shall be prorated.

(d) Annual leaves of absence shall not be cumulative except under sub. (1p) and except that unused annual leave shall, subject to the rules of the secretary, be used in the year following the one in which it was earned, but no employe shall lose any unused annual leave because the employe's work responsibilities prevented the usage of the unused annual leave during the first 6 months of the year following the year in which it was earned.

(e) Permanent classified employes, permanent part-time employes and seasonal employes with permanent seasonal status in class who are regularly employed for less than 12 months out of a year shall be granted proportional annual leave consistent with par. (a). These employes, with the approval of their appointing authority, may anticipate the vacation which they will earn during their current period of employment.

(f) An employe under this subsection earns annual leave any time he or she is on temporary layoff for a period not to exceed 20 working days.

(g) The continuous service of an employe eligible for annual leave shall not be considered interrupted if the employe either:

1. Was on an approved leave of absence, including but not limited to military leave, leave to serve in the unclassified service, leave for absence due to injury or illness arising out of state employment and covered by ch. 102; or

2. Left the service through resignation or layoff and is reemployed or recalled within 3 years.

(gm) Each employe of the state on October 17, 1971 shall be granted credit towards accumulated continuous service for all service in Wisconsin as a national guard technician which has not been credited under any other provision of this section.

(h) The length of time between an employe's resignation and reemployment under par. (g) 2. shall not be counted in computing years of continuous service under this subsection. Employes subject to par. (e) shall be deemed to have completed one full year of service for each such seasonal, sessional or other part-time annual period of service in computing years of continuous service under this subsection.

(j) The appointing authority shall respect the wishes of the eligible employes as to the time of taking their annual leave insofar as the needs of the service will permit.

(m) Payment for any unused authorized leave to which an employe is entitled upon termination, shall be made in a separate and distinct amount.

(1m) (a) Employes appointed to any of the following positions shall be entitled to annual leave of absence at the rate provided under par. (bt):

1. A career executive position under the program established under s. 230.24.

2. A position designated in s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9).

3. A position authorized under s. 230.08 (2) (e).

4. A position designated as an attorney position in which the employe is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26.

(bt) An employe appointed to a position listed under par. (a) shall be entitled to annual leave of absence without loss of pay based upon accumulated continuous state service at the rate of:

1. 120 hours each year for a full year of service during the first 5 years of service;

2. 160 hours each year for a full year of service during the next 5 years of service;

3. 176 hours each year for a full year of service during the next 5 years of service;

4. 200 hours each year for a full year of service during the next 5 years of service;

5. 216 hours each year for a full year of service after 20 years of service.

(e) Employes who previously were covered under sub. (1) (a), or other statutory provision regarding annual leave, who become subject to this subsection shall have their present continuous service credits for annual leave purposes applied to the career executive schedule at the appropriate rate. In no case shall the employe receive a reduction in annual leave hours earned by such change in schedules.

(eb) An employe under this subsection earns annual leave any time he or she is on temporary layoff for a period not to exceed 20 working days.

(f) The continuous service of an employe eligible for annual leave under this subsection shall not be considered interrupted if the employe leaves the service and is reemployed by the state in another position covered under this subsection. If reemployed in a position not covered under this subsection the employe shall be required to meet the continuous service requirements of sub. (1) (g). This paragraph applies to all persons who are employes covered under this subsection on or after July 1, 1973.

(1p) (a) Employes at the 160-hour or 176-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 40 of those hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave.

(b) Employes at the 200-hour or 216-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 80 of those hours of earned annual leave among one or more of these options:

1. Not to exceed 40 hours in cash;

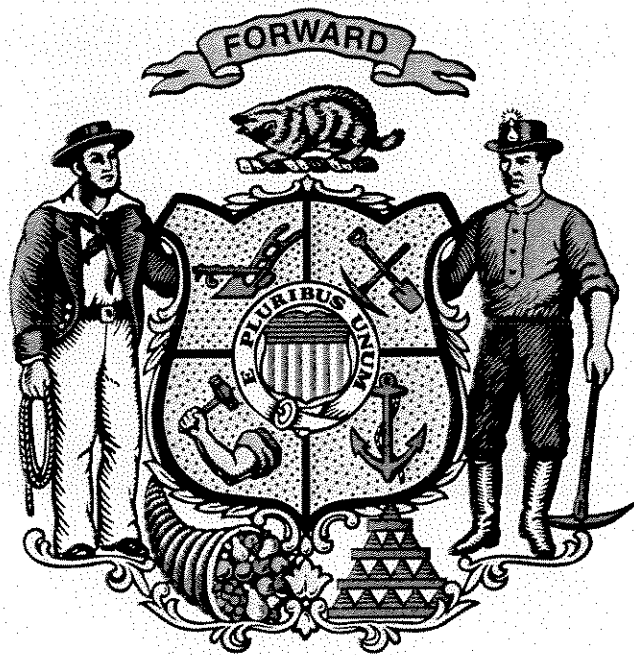
3. As credit for termination leave;

4. As accumulated sabbatical leave.

(c) Employes with less than the 160-hour rate under sub. (1) or (1m) who have accumulated, at any time during the employe's continuous state service, a minimum of 520 hours of sick leave may elect to receive not more than 40 hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave or both. An election under this paragraph shall be made in the year in which the annual leave is earned.

(1r) A state officer elected by the people may take vacation without loss of pay. No such state officer is entitled to payment for unused annual leave.

(2) Leave of absence with pay owing to sickness and leave of absence without pay, other than annual leave and leave under s. 103.10, shall be regulated by rules of the secretary, except that unused sick leave shall accumulate from year to year. After July 1, 1973, employes appointed to career executive positions under the program established under s. 230.24 or positions designated in s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9) or authorized under s. 230.08 (2) (e) shall have any unused sick leave credits restored if they are reemployed in a career executive position or in a position under s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and



COPY

The Honorable Joseph Leean  
Co-Chairman, Joint Committee on Finance  
Wisconsin Senate  
Room 115 South Capitol  
PO Box 7882  
Madison, WI 53707-7882

Dear Senator Leean:

Reference Senate Bill 489 relating to unused sick leave earned for service in Wisconsin as a National Guard Technician prior to 1966 and making an appropriation.

Enclosed is a copy of the appendix to SB 489 prepared by Blair Testin, director of Retirement Research for the Joint Survey Committee on Retirement Systems. The action by that committee was unanimous in favor of SB 489. The State Department of Military Affairs has verified the unused sick leave earned by those technicians/state employees.

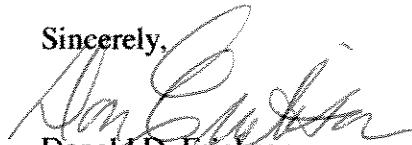
Mr. Testin's report indicates that 14 technicians would be effected by this bill. Additional research by the DMA indicates that only nine would be eligible. Five had either used up their sick leave or did not remain state employees. That would bring the cost estimate down to some \$60,000 spread over two to more than 20 years, depending on actual retirements.

Another consideration is that four of these state employees are not yet retired. Their unused sick leave credits as technicians, we assume, would be added to their sick leave accounts at the University of Wisconsin where they currently work. For those who have retired in this group, we estimate that only some \$43,000 would be needed to add to their current post-retirement health insurance premium accounts.

I understand that both Senator Farrow and Senator Risser will be contacting you to recommend favorable action on "dipping" the GPR funding required for SB 489. This is a unique situation for state employees-unlike any other. Time is short, as you know, for final legislative action this session.

We trust that you will look at SB 489 as a unique situation in the public interest and help us bring legislative action to, hopefully, a favorable conclusion this year.

Sincerely,



Donald D. Erickson  
Retired State Employee  
Former National Guard Technician  
203 W. Lakeview Ave.  
Madison, WI 53716  
(222-5876)

Enclosure

Copy furnished:  
Senators Farrow and Risser

## STATE OF WISCONSIN

## APPENDIX TO 1993 SENATE BILL 489

## REPORT ON JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

(Introduced by Senators Risser, Moen and Moore; cosponsored by Representative Musser, Lorge, Hasenohrl, Hanson, Black, Boyle, Johnsrud, Turner, Baldwin, Bolle and Gronemus, by request of Don Erickson.) An Act to amend 40.02 (22)(f), 40.04 (10) and 40.05 (4)(b); and to create 20.515 (1)(b) and 40.05 (4)(bf) of the statutes, relating to granting credit for the payment of post-retirement health insurance premiums under the state group health insurance program for accumulated unused sick leave earned for service in Wisconsin as a national guard technician prior to 1966 and making an appropriation.

EXTRACT OF COMMITTEE'S RECOMMENDATION ON THIS BILL

The Joint Survey Committee on Retirement Systems finds that Senate Bill 489 reflects good public policy, and the Committee recommends its passage.

PURPOSE OF THE BILL

This bill relates to National Guard technicians who were employed in Wisconsin and became state employees on January 1, 1966. Such employees commenced earning creditable service under the Wisconsin Retirement Fund (WRF) and also sick leave credits as then provided by law. These technicians were later granted retroactive service credit under the WRF for service before January 1, 1966, but they were not granted their accumulated sick leave credits that had been earned while employed as a National Guard technician before that date.

The purpose of this bill is to grant credit for unused sick leave accumulated in National Guard employment within Wisconsin before the date of January 1, 1966. Such accumulated sick leave credits, if adequate evidence was provided to the Employee Trust Funds, could then be used to pay post-retirement health insurance premiums under the state's accumulated sick leave credit conversion (ASLCC) plan.



- 2 -

Some of the effected technicians have already terminated their covered employment, and the bill provides for an appropriation under s. 20.515, Stats. to cover the costs of those participants who are no longer in covered employment.

#### ACTUARIAL EFFECT

This bill would increase the actuarial liabilities of the state's ASLCC plan, and funding for the additional accrued liabilities would partially come from an appropriation under s. 20.515, Stats., for those technicians who have already terminated their employment. The remaining costs would be added to the employer costs to fund the ASLCC Plan.

#### PROBABLE COST

Legislation during the 1971 session which granted retroactive service credit under the WRF for National Guard technicians that became state employees in 1966 indicated that there were 14 such employees at that time with approximately 91 years of National Guard service performed before 1966. For purpose of this appendix report, it is assumed that the sick leave credits relative to those 91 years would still be available to the effected active or retired participants or their beneficiaries. It is further assumed that the average unused sick leave accrual for the years before 1966 was six days per year, resulting in a total of 4,368 hours that may be recognized under this legislation if proper evidence of such accrual is furnished to the DETP.

It is further assumed that the average salary <sup>a little high</sup> at retirement (which would vary widely) is/was \$20 per hour. Under these assumptions, the total cost of granting additional accumulated sick leave credits to effected participants or their beneficiaries for conversion purposes under the state's ASLCC plan would be under \$100,000. These costs would be paid from GPR sources under s. 20.515 or employer fringe benefit accounts for active participants.

#### PUBLIC POLICY

National Guard technicians who were employed in Wisconsin became state employees on January 1, 1966, pursuant to session law. As such, they became eligible for the various fringe benefit programs for state employees including the Wisconsin Retirement Fund (WRF) and sick leave credits. At a later date the legislature extended retroactive retirement service credit to such technicians for service performed before 1966--newly extending

about 91 years of creditable service for (14) effected participants. However, this retroactive legislation did not grant similar credits for unused sick leave that had been accumulated for service as National Guard technicians in the State of Wisconsin before January 1, 1966. 9

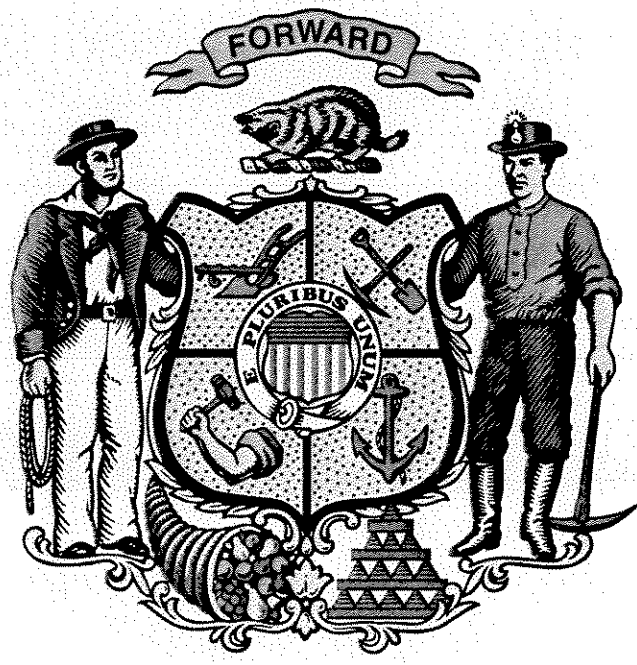
The State's accumulated sick leave credit conversion (ASLCC) plan became effective on July 1, 1972, and it provides that unused sick leave accumulations at the time of retirement may be converted under certain conditions to pay health insurance premiums after retirement until the account is exhausted. The credits are converted at retirement to a dollar value based upon the base salary at the time of termination.

The purpose of this legislation is to grant sick leave credits for sick leave that had been accumulated before 1/1/66, if adequate evidence of such accumulation is furnished to the DETF. This legislation could effect about 14 active or retired participants or the beneficiaries thereof, with a probable maximum additional cost of \$100,000 for accumulated sick leave credits. This legislation would establish equity for this unique group of state employees who have not received such recognition to this date.

#### RECOMMENDATION

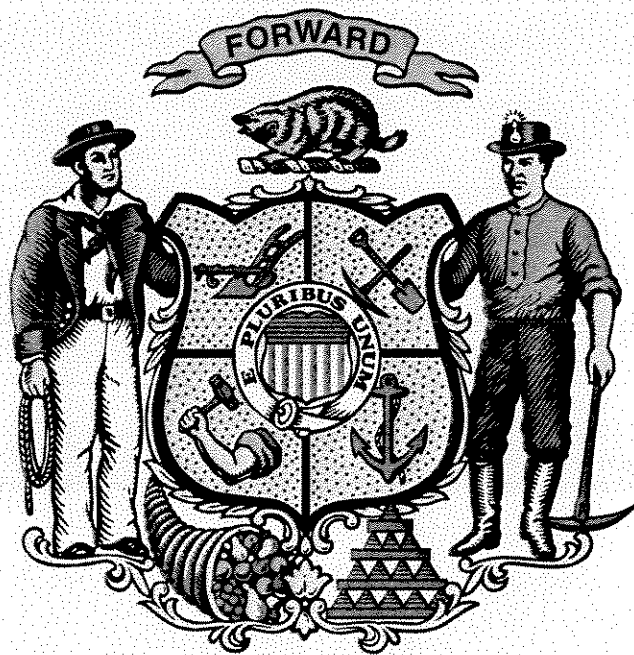
The Joint Survey Committee on Retirement Systems finds that Senate Bill 489 reflects good public policy, and the Committee recommends its passage.

12/14/93



**BACKGROUND INFORMATION**  
**(Earned/Unused Sick Leave - NG Technicians)**

- a. Appendix to 1993-94 SB 489 prepared by Blair Testin, director of Retirement Research for the 1993-94 Joint Survey Committee on Retirement Systems, fiscal estimate and 1993-94 Senate action on SB 489. Committee action on SB 489 was unanimous in favor of the bill.
- b. Department of Military Affairs letter, dated 9 November 1994, listing those former NG Technicians who would be eligible for this one-time earned sick leave conversion credit at time of state retirement.
- c. Chart showing current data on each of the former NG Technicians including current state employee status.
- d. Time frame data showing the projected year and amount of conversion money needed for each of the eligible state employees.
- e. Extract from Wisconsin Statutes which previously granted retirement credit for those same technician years of service.
- f. Extract from NG Technician ACT of 1968 (90th Congress) stating that NG Technicians were considered state employees prior to January 1969, the date NG Technicians, nation-wide, became Federal Civil Service employees with all benefits earned as technicians.



## **BACKGROUND ON LOST SICK LEAVE EARNED DURING STATE SERVICE AS A WISCONSIN NATIONAL GUARD TECHNICIAN**

Some Wisconsin National Guard technicians who worked for the State Department of Military Affairs converted to State employee status from Federal status prior to 1969. They were under no retirement system at that time.

Those technicians, both Air and Army Guard, received pay and sick leave benefits from the Federal Government only during the period 1947-1969. Length of service for those technicians ranged from 1/2 year to 14 years.

A State law was passed in 1971 authorizing those years as a National Guard technician be credited towards accumulated continuous service for State retirement which had not been credited under other provisions of State law. Earned sick leave was lost at the time of conversion to State status as it was not significant as a retirement benefit under State service at that time.

The State law converting accumulated sick leave hours to dollars for payment of health insurance premiums upon retirement from State service became effective July 1, 1972 with some later amendments.

Nine technicians who converted to State service would be eligible for the lost sick leave benefit upon retirement from State service if the intent of the 1971 State law was to include this benefit along with credited years for retirement, or State law was amended or created to correct this oversight.

Enclosed letter from the Department of Military Affairs lists the nine State employees, active and retired, who would be eligible for the conversion benefit.

Total fiscal impact, based on an estimated \$15 per hour wage at time of retirement, would be under \$50,000 over a period of several years.



State of Wisconsin \ DEPARTMENT OF MILITARY AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

P.O. BOX 8111  
MADISON 53708-8111  
TELEPHONE: 608 - 241-6310  
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*Don - 222-5876*

WING-SP (690-630)

19 October 1992

MEMORANDUM FOR Donald E. Erickson, 203 W. Lakeview Ave,  
Madison, WI 53716

SUBJECT: Former National Guard Technicians

1. Per your request, listed below are those former National Guard technicians who separated from service prior to 1 January 1969 and subsequently employed by the State of Wisconsin. Also listed is the hours of sick leave credit remaining at their separation.

Donald D. Erickson	857 hours
Lewis C. Greenelsh	670 hours
Donald O. Ross	544 hours
James J. Lison	540 hours
Donald O. Boe	334 hours
James A. Maynard	237 hours
Leo M. Skille	72 hours

2. Listed below are those former National Guard technicians who separated from service prior to 1 January 1969 and have been unable to locate any leave records at this time.

Elwood K. Broughton  
Vincent T. Fitzgerald

FOR THE ADJUTANT GENERAL:

*Roger L. Brill*  
ROGER L. BRILL  
COL, GS, WIARNG  
Dir, Support Personnel

COPY

Name/ Social Security #	Years as Technician	Earned Lost Sick Leave Hours	Current Status	Retirement Date	Age	Phone Number	Legislator	Military Service	Address/ Place of Employment
Donald D. Erickson 397-22-6084	14	857	Retired	1/4/90	64	222- 5876	Chvala Hanson	ARNG	203 W. Lakeview Ave. Madison, WI 53716 Retired
Lewis C. Greenelsh 520-18-7818	8	670	Retired	1/2/87	68	231- 2947	Risser Black	ARNG	322 S. Owen Drive Madison, WI 53705 Retired
Donald O. Ross 399-30-2862	8	544	State Employee	3 to 5 Years	59	222- 6808	Chvala Hanson	ANG	5209 Academy Drive Madison, WI 53716 UW Madison, Engineering
James J. Lison 387-14-7207	5	540	Retired	4/28/83	72	833- 1202	Risser Black	ARNG	310 Yosemite Trail Madison, WI 53705 Retired
Donald O. Boe 389-28-7404	5	334	State Employee	2 to 3 Years	61	271- 8629	Risser Young	ANG	1402 Winslow Lane Madison, WI 53711 UW Madison, Physical Plant
James A. Maynard 387-38-9375	3	237	State Employee	8 to 10 Years	52	274- 2855	Risser Young	ANG	5770 Devoro Road Madison, WI 53711 UW Madison, Space Science
Leo M. Skille 396-26-2007	1	72	State Employee	3/19/93	64	271- 4780	Risser Young	ANG	5145 Loruth Terrace Madison, WI 53711 UW Madison, Space Science
Vincent T. Fitzgerald 387-38-9746	3	*	State Employee	6 Years	52	271- 6328	Risser Young	ANG	1118 Starlight Drive Madison, WI 53711 UW Madison, Chemistry
Elwood K. Broughton	12	*	Retired	—	80	(904) 742- 1087	—	ARNG	90 Aloha Way Molakai Mobile Park Leesburg, FL 34788 Retired

\* This record not immediately available



12/20/91

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4661/ldn  
BJS:skg:ljd

# BACKGROUND INFORMATION

Scott Stenger, Senator Van Sistine's office:

As you review the attached bill, note that, because the bill increases benefits for public employes who are already retired, it includes an appropriation from general purpose revenues and, in addition, must pass the legislature by a three-fourths vote to become law. See article IV, section 26, of the Wisconsin constitution.

Also, the following 2 related issues may be raised regarding the attached bill:

1. Whether or not the bill is required under s. 13.50 (6), stats., to be referred to the joint committee on retirement systems. (Note that at the end of the bill analysis I have specified that the bill will be referred to that committee.)

2. Whether the bill grants "extra compensation" within the meaning of article IV, section 26, of the Wisconsin constitution (I have assumed that it does) and, if so, whether the bill provides a benefit under WRS (I have assumed that it does). A bill that provides extra compensation to a public employe that is not in the form of an increased benefit under WRS is unconstitutional under article IV, section 26.

The 2 issues described above were also raised in regard to 1991 Senate Bill 20 (which has passed both houses) and 1991 Assembly Bill 131. See my attached memorandum to Senator Moen and Representative Plache dated March 4, 1991, which is included in the drafting files of those bills.

Finally, for your information (and as the bill analysis indicates), my research found that national guard technicians became state employes (prospectively) on January 1, 1966, under chapter 323, laws of 1965, and were given credit under WRF for pre-1966 national guard technician service (but not accumulated unused sick leave) on October 17, 1971, under chapter 91, laws of 1971. State employes first gained sick leave conversion rights on July 1, 1972, under chapter 125, laws of 1971, sections 28, 272 and 532 (16) -- the 1971 executive budget bill.

Barry J. Stern  
Legislative Attorney  
266-8906



# The State of Wisconsin

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DR. H. RUPERT THEOBALD  
CHIEF

March 4, 1991

### MEMORANDUM

To: Senator Moen and Representative Plache

From: Barry J. Stern, Legislative Attorney

Subject: 1991 Senate Bill 20/Assembly Bill 131 Issues  
Referral to Joint Retirement Committee  
Constitutionality

The purpose of this memorandum is to briefly discuss the following issues that have recently surfaced regarding 1991 Senate Bill 20 and 1991 Assembly Bill 131 (the "bills"), which, as you know, grant a benefit to certain public employees who have terminated employment covered under the Wisconsin retirement system (WRS) by allowing them to extend the 5-year deadline under current law for converting their sick leave credits to pay for health insurance:

1. Whether or not s. 13.50 (6), stats., requires that the bills be referred to the joint survey committee on retirement systems (JSCRS).

2. Whether or not the bills grant "extra compensation" within the meaning of article IV, section 26 of the Wisconsin constitution; and, if the bills do grant extra compensation, whether the bills provide a benefit under WRS. If the bills do grant extra compensation but do not provide an increased benefit under WRS, the bills are unconstitutional; if the bills provide extra compensation as an increased benefit under WRS, the bills are constitutional but must pass each house of the legislature by a three-fourths vote and include an appropriation from general purpose revenues in order to become law.

### Referral to JSCRS

Section 13.50 (6) (a), stats., provides, in part, that "No bill or amendment thereto creating or modifying any system for, or making any provision for, the retirement of or payment of pensions to public officers or employes, shall be acted upon by the legislature until it has been referred to the joint survey committee on retirement systems and such committee has submitted a written report on the proposed bill." [Emphasis added]

The bills amend s. 40.05 (4) (b), stats. While most of the other provisions in s. 40.05 (4) pertain to group health insurance benefits and not to retirement benefits, it can be argued that the sick leave conversion provisions in s. 40.05 (4) (b) are provisions that modify WRS or make a provision for the retirement of public employes, because: 1) The sick leave conversion benefit is available only to a public employe who is eligible for coverage under the state group health insurance plan and, with certain exceptions, in order to be eligible for coverage,

[M91Moen03/04]

the employe must be a participant under the Wisconsin retirement system (WRS); and 2) The benefit is available only upon retirement (upon termination of employment covered under WRS and being eligible for and applying for a WRS retirement benefit) or, if the eligible employe has at least 20 years of creditable service under WRS and is eligible for but has deferred application for a WRS retirement benefit.

When a bill that modifies WRS or makes a provision for the retirement of public employes is drafted, the drafting attorney is required to add the following statement to the bill analysis: " This bill will be referred to the joint survey committee on retirement systems for a detailed analysis, which will be printed as an appendix to the bill."

After conducting some preliminary research on the issue and after further reflection, I cannot say with any certainty whether or not the bills modify WRS or provide a retirement benefit; however, I tend to agree with the arguments, above, that the bills do modify WRS and provide a retirement benefit. Therefore, I am of the opinion that the bills should be referred to JSCRS and, in hindsight, I should have added to the bill analyses the statement requiring referral to JSCRS.

#### Constitutional issues

Article IV, section 26 of the Wisconsin constitution (section 26) provides, in part, that "The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract entered into; .... This section shall not apply to increased benefits for persons who have been or shall be granted benefits of any kind under a retirement system when such increased benefits are provided by a legislative act passed on a call of ayes and noes by a three-fourths vote of all the members elected to both houses of the legislature, which act shall provide for sufficient state funds to cover the costs of the increased benefits." [Emphasis added]

Section 26 generally prohibits the legislature from passing a law that grants "extra compensation" to a public employe for the employe's services after he or she has terminated public employment. I cannot say with any certainty whether or not the benefit provided in the bills is "extra compensation" for purposes of section 26. In my brief review of related case law, all of the cases I found concerned post-termination salary or pension increases. It can therefore be argued that, because there is no case that specifically excludes the type of benefit provided in the bills from the definition of "compensation" for purposes of section 26, the benefit should be considered to be a form of extra compensation. In addition, the benefit provided in the bills may require the state to make payments for health insurance for certain employes during years in which, under current law, those employes' sick leave credits would have been exhausted. However, it can also be argued that because the benefit provided in the bills does not increase the dollar value of an employe's sick leave credits (total compensation) but simply extends the date before which the employe must begin to draw on those dollars, the benefit does not constitute extra compensation.

I tend to agree with the 2nd argument, above, that the benefit provided in the bills is not "extra compensation" for purposes of section 26 and that, therefore, there is no constitutional problem with the bills.

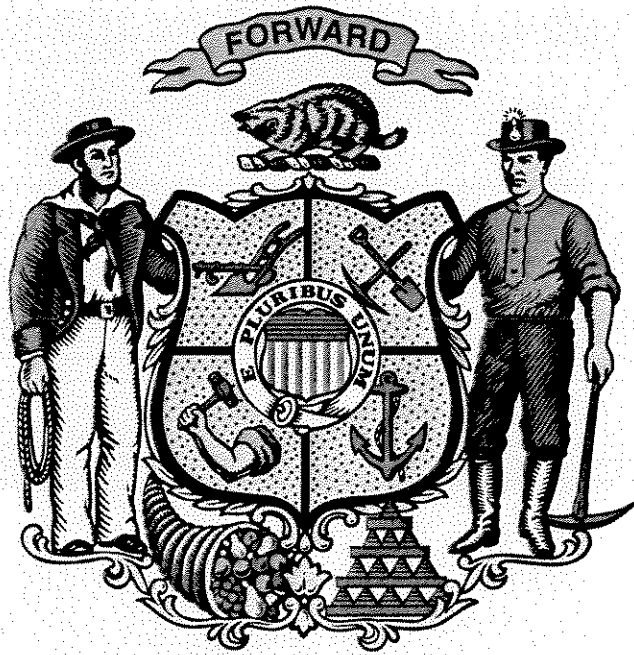
However, if it were to be determined that the benefit provided in the bills is a form of extra compensation, the next question is whether or not the bills provide a benefit under WRS. If the bills do grant extra compensation but do not provide an increased benefit under WRS, the bills are unconstitutional; if the bills provide extra compensation as an increased benefit under WRS, the bills are constitutional but must pass each house of the legislature by a three-fourths vote and include an appropriation from general purpose revenues in order to become law. As I have indicated in my discussion of the issue on referral to JSCRS, I am of the opinion that the bills do provide an increased benefit under WRS. Therefore, if the bills are considered to be granting extra compensation, the bills are not unconstitutional, but must pass each house of the legislature by a three-fourths vote and include an appropriation from general purpose revenues in order to become law.

Please call if you have any questions.

BJS:ch

cc: Tom Korpady, Dept. of Employee Trust Funds  
David Stella, Dept. of Employee Trust Funds  
Blair Testin, Retirement Research Director  
Drafting files, 1991 SB 20 and AB 131

6-3019 - Blair - Hip surgent



## STATE OF WISCONSIN

## APPENDIX TO 1993 SENATE BILL 489

## REPORT ON JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

(Introduced by Senators Risser, Moen and Moore; cosponsored by Representative Musser, Lorge, Hasenohrl, Hanson, Black, Boyle, Johnsrud, Turner, Baldwin, Bolle and Gronemus, by request of Don Erickson.) An Act to amend 40.02 (22)(f), 40.04 (10) and 40.05 (4)(b); and to create 20.515 (1)(b) and 40.05 (4)(bf) of the statutes, relating to granting credit for the payment of post-retirement health insurance premiums under the state group health insurance program for accumulated unused sick leave earned for service in Wisconsin as a national guard technician prior to 1966 and making an appropriation.

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- 2 -

Some of the effected technicians have already terminated their covered employment, and the bill provides for an appropriation under s. 20.515, Stats. to cover the costs of those participants who are no longer in covered employment.

#### ACTUARIAL EFFECT

This bill would increase the actuarial liabilities of the state's ASLCC plan, and funding for the additional accrued liabilities would partially come from an appropriation under s. 20.515, Stats., for those technicians who have already terminated their employment. The remaining costs would be added to the employer costs to fund the ASLCC Plan.

#### PROBABLE COST

Legislation during the 1971 session which granted retroactive service credit under the WRF for National Guard technicians that became state employees in 1966 indicated that there were 14 such employees at that time with approximately 91 years of National Guard service performed before 1966. For purpose of this appendix report, it is assumed that the sick leave credits relative to those 91 years would still be available to the effected active or retired participants or their beneficiaries. It is further assumed that the average unused sick leave accrual for the years before 1966 was six days per year, resulting in a total of 4,368 hours that may be recognized under this legislation if proper evidence of such accrual is furnished to the DETF.

It is further assumed that the average salary at retirement (which would vary widely) is/was \$20 per hour. Under these assumptions, the total cost of granting additional accumulated sick leave credits to effected participants or their beneficiaries for conversion purposes under the state's ASLCC plan would be under \$100,000. These costs would be paid from GPR sources under s. 20.515 or employer fringe benefit accounts for active participants.

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- 3 -

about 91 years of creditable service for 14 effected participants. However, this retroactive legislation did not grant similar credits for unused sick leave that had been accumulated for service as National Guard technicians in the State of Wisconsin before January 1, 1966.

The State's accumulated sick leave credit conversion (ASLCC) plan became effective on July 1, 1972, and it provides that unused sick leave accumulations at the time of retirement may be converted under certain conditions to pay health insurance premiums after retirement until the account is exhausted. The credits are converted at retirement to a dollar value based upon the base salary at the time of termination.

The purpose of this legislation is to grant sick leave credits for sick leave that had been accumulated before 1/1/66, if adequate evidence of such accumulation is furnished to the DETF. This legislation could effect about 14 active or retired participants or the beneficiaries thereof, with a probable maximum additional cost of \$100,000 for accumulated sick leave credits. This legislation would establish equity for this unique group of state employees who have not received such recognition to this date.

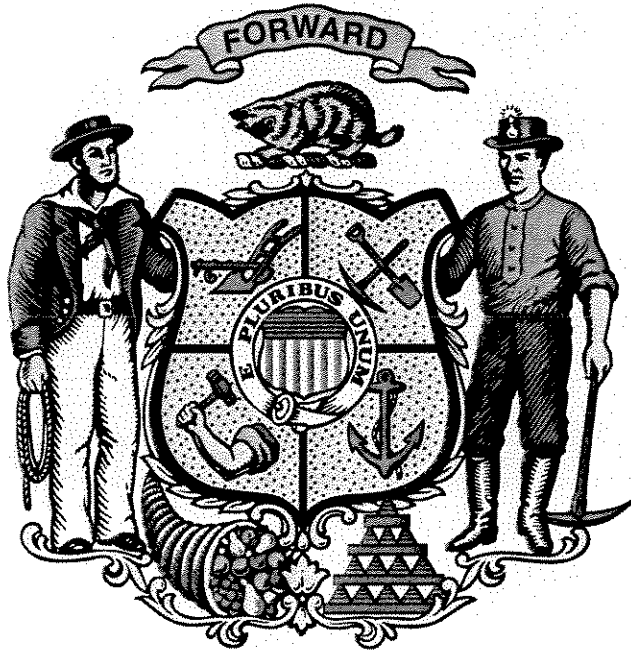
#### RECOMMENDATION

The Joint Survey Committee on Retirement Systems finds that Senate Bill 489 reflects good public policy, and the Committee recommends its passage.

12/14/93

ONLY 8 EFFECTED BASED ON  
ADDITIONAL PMA WI RESEARCH





10-28. A. Assembly amendment 2 offered by Representative Foti . . . . . 478

10-28. A. Assembly amendment 2 laid on table, Ayes 57, Noes 41 . . . . . 478

10-28. A. Assembly amendment 1 laid on table . . . . . 479

10-28. A. Ordered to a third reading . . . . . 479

10-28. A. Rules suspended to give a third reading, Ayes 97, Noes 1 . . . . . 479

10-28. A. Read a third time and passed, Ayes 75, Noes 23 . . . . . 479

10-28. A. Ordered immediately messaged . . . . . 479

10-28. S. Received from Assembly concurred in . . . . . 559

11- 1. S. Report correctly enrolled.

12-15. S. Presented to the Governor on 12-9-93 . . . . . 600

12-22. S. Report approved by the Governor on 12-16-93 . . . . . 606

1993 WI Act 123 - Published 12-30-93

10-28. A. Assembly amendment 2 laid on table . . . . . 476

10-28. A. Assembly amendment 3 offered by Representatives Krug, Deininger and Bell . . . . . 476

10-28. A. Refused to reject assembly amendment 3, Ayes 12, Noes 85 . . . . . 476

10-28. A. Assembly amendment 3 adopted . . . . . 476

10-28. A. Assembly amendment 4 offered by Representatives Welch and Ward . . . . . 476

10-28. A. Point of order raised by Representative Krug that assembly amendment 4 not germane . . . . . 476

10-28. A. Chair ruled point of order well taken . . . . . 476

10-28. A. Ordered to a third reading . . . . . 476

10-28. A. Rules suspended . . . . . 476

10-28. A. Read a third time and concurred in as amended, Ayes 95, Noes 2 . . . . . 476

10-28. A. Ordered immediately messaged . . . . . 476

10-28. S. Received from Assembly amended and concurred in as amended, Assembly amendments 1 and 3 adopted . . . . . 559

10-28. S. Rules suspended and taken up . . . . . 559

10-28. S. Assembly amendment 1 concurred in . . . . . 559

10-28. S. Assembly amendment 3 concurred in . . . . . 559

10-28. S. Action ordered immediately messaged . . . . . 559

11- 2. S. Chief Clerk's correction . . . . . 569

11- 2. S. Chief Clerk's correction . . . . . 569

11- 2. S. Report correctly enrolled.

12-15. S. Presented to the Governor on 12-9-93 . . . . . 600

12-15. S. Report approved by the Governor on 12-10-93 . . . . . 593

1993 WI Act 97 - Published 4-24-93

**Senate Bill 488**

AN ACT to renumber 301.046 (4); to renumber and amend 941.26 (1); to amend 19.85 (1) (d), 302.11 (5), 304.02 (2), 304.06 (1) (d) 1, 304.06 (1) (g), 941.26 (3), 950.045 and 972.11 (2) (b) (intro.); to repeal and recreate 941.26 (2); and to create 301.046 (4) (a) to (d), 301.048 (4m), 304.06 (1) (d) 3m, 304.06 (1) (cm), 304.063, 901.04 (3) (cm), 939.32 (1) (cn), 939.623, 939.624 and 941.26 (4) of the statutes, relating to: mandatory minimum sentences for certain repeat criminal offenders; oleoresin of capsicum and tear gas; participation at parole interviews and hearings; notification to crime victims and protected persons; admissibility of evidence regarding the manner of dress of a complaining witness; granting rule-making authority; and providing a penalty. (FE)

1993

10- 5. S. Introduced by Senators Weeden, Petak, Rosenzweig, Farrow, Lasee, Huelman, Buettner, Darling and Schultz; cosponsored by Representatives Harsdorf, Duff, Silbaugh, Vergerout, Porter, Wirch, Walker, Goetsch, Underheim, Musser, Dobyns and Ott.

10- 5. S. Read first time and referred to committee on Judiciary and Insurance . . . . . 439

10- 6. S. Fiscal estimate received.

10- 7. S. Report introduction and adoption of Senate amendment 1, Ayes 7, Noes 0 and passage as amended recommended, Ayes 5, Noes 2 . . . . . 443

10- 7. S. Read a second time . . . . . 452

10- 7. S. Referred to joint committee on Finance . . . . . 452

10-21. S. Report adoption of Senate amendment 1, Ayes 15, Noes 0 and passage as amended recommended, Ayes 15, Noes 0 . . . . . 490

10-21. S. Fiscal estimate received.

10-21. S. Senate amendment 1 adopted . . . . . 505

10-21. S. Senate amendment 2 offered by Senator Burke . . . . . 505

10-21. S. Senate amendment 2 rejected, Ayes 16, Noes 15 . . . . . 505

10-21. S. Senate amendment 3 offered by Senator Adelman . . . . . 505

10-21. S. Senate amendment 3 rejected . . . . . 505

10-21. S. Senate amendment 4 offered by Senators Leean and George . . . . . 506

10-21. S. Senate amendment 4 adopted . . . . . 506

10-21. S. Ordered to a third reading . . . . . 506

10-21. S. Rules suspended . . . . . 506

10-21. S. Read a third time and passed, Ayes 21, Noes 10 . . . . . 506

10-21. S. Ordered immediately messaged . . . . . 506

10-26. A. Received from senate . . . . . 439

10-26. A. Read first time and referred to committee on Rules . . . . . 439

10-26. A. Fiscal estimate received.

10-26. A. Fiscal estimate received.

10-27. A. Rules suspended to withdraw from committee on Rules and refer to foot of calendar . . . . . 465

10-27. A. Read a second time . . . . . 470

10-27. A. Assembly amendment 1 offered by Representative Plache . . . . . 471

10-27. A. Assembly amendment 2 offered by Representative Welch . . . . . 471

10-28. A. Assembly amendment 1 adopted . . . . . 476

**Senate Bill 489**

AN ACT to amend 40.02 (22) (f), 40.04 (10) and 40.05 (4) (b); and to create 20.515 (1) (b) and 40.05 (4) (bf) of the statutes, relating to granting credit for the payment of postretirement health insurance premiums under the state group health insurance program for accumulated unused sick leave earned for service in Wisconsin as a national guard technician prior to 1966 and making an appropriation. (FE)

1993

10- 5. S. Introduced by Senators Risser, Moen and Moore; cosponsored by Representatives Musser, Lorge, Hasenohrl, Hanson, Black, Boyle, Johnsrud, Turner, Baldwin, Bolle and Gronemus, by request of Don Erickson.

10- 5. S. Read first time and referred to Joint Survey committee on Retirement Systems . . . . . 439

10-19. S. Fiscal estimate received.

11-16. S. Public hearing held.

12- 1. S. Fiscal estimate received.

12-29. S. Report of Joint Survey committee on Retirement Systems received with favorable recommendation . . . . . 609

12-29. S. Referred to committee on Judiciary and Insurance . . . . . 609

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2- 2. S. Public hearing held.

2- 3. S. Report passage recommended, Ayes 6, Noes 1 . . . . . 669

2-15. S. Read a second time . . . . . 716

2-15. S. Referred to joint committee on Finance . . . . . 716

3-30. S. Failed to pass pursuant to Senate Joint Resolution 1 . . . . . 955

**Senate Bill 490**

AN ACT to amend 804.10 (1) and 804.12 (2) (a) 4 of the statutes, relating to permitting a court to order a party in a civil action to submit to a vocational examination. (FE)

1993

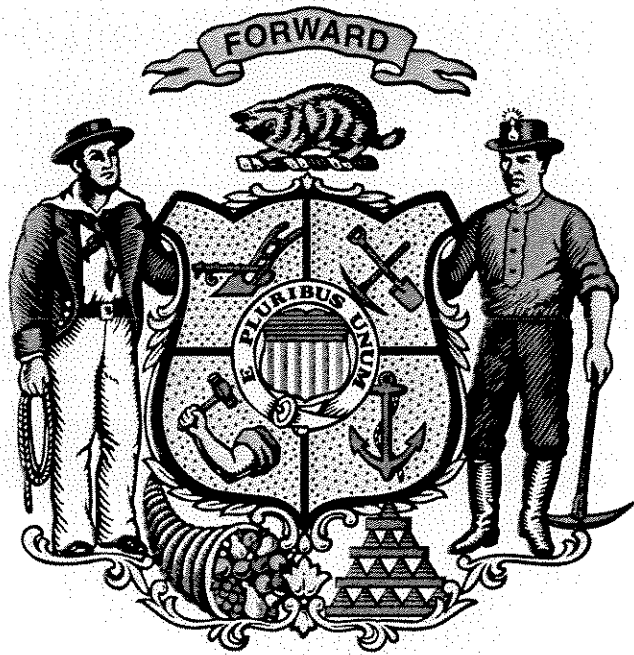
10- 7. S. Introduced by Senator Huelman; cosponsored by Representative Baldus.

10- 7. S. Read first time and referred to committee on Judiciary and Insurance . . . . . 441

10-19. S. Fiscal estimate received.

10-20. S. Public hearing held.

10-25. S. Fiscal estimate received.



# Calendar No. 1426

90TH CONGRESS }  
2d Session }

SENATE }

REPORT  
No. 1446

## NATIONAL GUARD TECHNICIAN ACT OF 1968

JULY 22, 1968.—Ordered to be printed

MR. STENNIS, from the Committee on Armed Services,  
submitted the following

### REPORT

[To accompany S. 3865]

The Committee on Armed Services, having had under consideration the question of legislation affecting the National Guard technicians, reports the following bill (S. 3865), the National Guard Technician Act of 1968, and recommends that it do pass.

#### PURPOSE OF LEGISLATION

In authorizing Federal employee status for the National Guard technicians, the purpose of this legislation is—

- (a) To provide a retirement and fringe benefit program which will be both uniform and adequate;
- (b) To recognize the military requirements and the State characteristics of the National Guard by providing for certain statutory administrative authority at the State level with respect to the technician program;
- (c) To clarify the technician's legal status which in certain areas has been the subject of conflicting court decisions, especially on the matter of whether technicians are covered under the Federal Tort Claims Act regarding third party actions against the U.S. Government.

#### BASIC PROBLEM JUSTIFYING LEGISLATION

The technicians, now numbering about 42,000, are full-time civilian employees of the National Guard whose salaries are paid in full by the Federal Government and who must meet all the mental and physical standards as well as professional qualifications prescribed by the military departments. About 95 percent of the technicians are

required to hold concurrent National Guard membership as a condition for their civilian employment. The concept of the technician program is that the technicians will serve concurrently in three different ways: (a) Perform full-time civilian work in their units; (b) perform military training and duty in their units; and (c) be available to enter active Federal service at any time their units are called.

Despite uniformity with respect to salaries and required standards there has been no program, on a uniform national basis for a retirement and fringe benefits program for technicians. The technicians except for those in the District of Columbia, are considered State employees. About 16,000 or 40 percent are covered under Federal retirement systems which may be combined with the social security program. About 24,000 depend on social security alone for their civilian retirement coverage. It should be noted that a total of 92 percent of the technicians, however, are covered under social security which may be combined with State retirement programs.

The fringe benefit program of technicians, such as group health and group life insurance, is dependent solely on coverage which may vary from no coverage to whatever may be provided for other State employees.

In addition there is the matter of clarifying the precise legal status of the technicians to prevent conflicting court decisions regarding third party claims against the Government arising out of accidents within the scope of employment.

### SUMMARY OF LEGISLATION

This bill implements the purpose by converting the technicians to Federal employee status with certain controls on administration and supervision which would as a matter of law remain at the State level. In effect, the technicians will become Federal employees receiving the salaries, fringe and retirement benefits, but with certain administrative control regarding employment supervision remaining with the adjutants general of the jurisdiction concerned under regulations prescribed by the Secretary concerned.

The principal features of this bill which are later discussed in detail may be summarized by item as follows:

(a) A broadened statutory scope of the technician employment program thereby eliminating the permanent provisions of law relating to "caretakers and clerks" which have been suspended by various appropriation acts.

(b) Conversion of National Guard technicians to a Federal employee status with the authority for requiring National Guard membership as a condition for civilian employment. About 95 percent of the technician force would be in this latter category. Federal status would be in the noncompetitive category for this group.

(c) Conversion of technician positions to classified or wage board Federal positions.

(d) Requirement for adjutants general to be the sole agent for employment and administration of technician program under regulations prescribed by the Secretary concerned.

(e) Provision for final level of appeal in adjutants general for all technicians for certain adverse personnel actions.

(f) Provision for termination of civilian employment upon loss of Guard membership, failure to meet military security standards, or separation for cause, with requirement of 30 days' notice by adjutants general prior to termination.

(g) Provision for nonapplication of veterans preference provisions for technicians because of the military nature of the National Guard program.

(h) Provision for compensatory time off in lieu of overtime and differential pay for technicians (other than those assigned to operational duties at air defense sites) which is the practice under the present program.

~~(i) Credit for past technician service for Federal employee purposes with respect to leave, Federal employee death and injury compensation, group health and life insurance, severance pay, tenure, and status.~~

(j) Credit for past technician service in full for civil service retirement eligibility purposes but with a limit of 55 percent for retirement computation purposes.

(k) Provision of election to remain under a State retirement system with the consent of the State in lieu of coming under Federal civil service system.

(l) Permissive authority to retain technician Reserve officers until age 60.

(m) Provision requiring technicians to be in the program either now or in the future in order to receive credit for past technician service.

(n) An effective date of Jan. 1, 1969 for legislation.

## PRESENT TECHNICIAN EMPLOYMENT AND RETIREMENT PROGRAM

### *Legal status*

Except for those in the District of Columbia National Guard, technicians are considered employees of the State. Their salaries, however, are paid from Federal funds based on comparable classified and blue-collar Federal rates.

By regulations about 95 percent of the technicians are required to be military members of the National Guard as a condition for their civilian technician employment.

### *Number of technicians as of January 1, 1968*

There were 40,546 technicians employed throughout the various States on a full-time civilian basis with about 95 percent required to hold dual status in the National Guard as a condition for employment.

Of this total approximately 18,000 occupied positions comparable to the general schedule rates with about 22,000 holding so-called blue-collar positions and receiving pay under rates comparable to the Federal wage board schedules.

### *Salaries of technicians*

For the technicians paid at comparable general schedule rates, the range is from the equivalent of GS-1 through GS-14. As of July 1, 1968, this range is from GS-1 (\$3,889 to \$5,057) to GS-14 (\$16,946 to \$22,031). The average salary for all technicians (male and female) as of January 1, 1968, was \$7,696.

With regard to special pays, overtime, differential and premium pay, none is authorized under the present system, only compensatory time off.