1999 DRAFTING REQUEST

Bill

Received: **01/12/99**

Received By: **champra**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-0610**

By/Representing: **Jessica**

This file may be shown to any legislator: **NO**

Drafter: **champra**

May Contact:

Alt. Drafters:

Subject: **Employ Pub - miscellaneous**
Employ Pub - employe benefits

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Coverage under the federal social security act and the creation of an alternate social security plan for certain state employes

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Instructions:

Redraft 1997 AB 916

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	champra 01/21/99	wjackson 01/22/99		_____ _____			State Retire
/1			lpaasch 01/22/99	_____ _____	lrb_docadmin 01/22/99	lrb_docadmin 04/15/99	

FE Sent For: 04-27-99

<END>

1999 DRAFTING REQUEST

Bill

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Redraft 1997 AB 916

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	champra	/1 1/22 WLJ	1-22 LP	1-22 LP JP			

FE Sent For:

<END>

Jeff Plale
State Representative
21st Assembly District

January 11, 1999

Richard Champagne, Legislative Attorney
Legislative Reference Bureau
100 North Hamilton, 5th Floor
Madison, WI 53708

Re: Social Security Alternative plan for temporary, part-time, and seasonal state employes.

Dear Mr. Champagne:

Representative Plale would like to re-draft 1997 Assembly Bill 916, which would exempt temporary, seasonal, and part-time state employes from Social Security coverage. You may recall this proposal, as you were the legislative attorney who drafted this legislation for us last year.

Enclosed you will find a copy of last year's bill, which accurately reflects Representative Plale's legislative intent. We would like this session's draft done in the same fashion.

Thank you for your time and assistance in this matter. Please contact our office if you have any questions of need any additional information.

Sincerely,

Jessica L. Clark

Jessica L. Clark
Legislative Staff
Rep. Jeff Plale's Office

OFFICE
State Capitol
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(608) 266-0610
1-888-534-0021
Fax:
(608) 282-3621
E-Mail:
Rep.Plale@legis.state.wi.us

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1404 Eighteenth Avenue
South Milwaukee, WI 53172-1435
(414) 764-5292
Fax:
(414) 571-0035

State of Wisconsin
1997 – 1998 LEGISLATURE

LRB–4653/3
RAC:jlg:jf

1997 ASSEMBLY BILL 916

March 17, 1998 – Introduced by Representatives PLALE, JENSEN, HANSON, DUFF, GROTHMAN, HEBL, KEDZIE, KREUSER, F. LASEE, NASS, PORTER, RILEY, STASKUNAS, WALKER, WASSERMAN and ZIEGELBAUER, cosponsored by Senators RUDE and WELCH. Referred to Joint survey committee on Retirement Systems.

AN ACT *to create* 40.41 (6) (g), subchapter X of chapter 40 [precedes 40.98] and 111.91 (2) (o) of the statutes; **relating to:** excluding from coverage under the federal Social Security Act services performed by part–time, seasonal and temporary state employes, establishing an alternative plan with comparable benefits to social security for these part–time, seasonal and temporary state employes and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, all state employes are included for coverage under the federal Social Security Act. This bill excludes from social security coverage those services performed by part–time, temporary and seasonal state employes, beginning on January 1, 1998, for all part–time, temporary and seasonal state employes who are not otherwise required to be covered under social security. The definitions of part–time, temporary and seasonal state employes are those provided in federal law. Part–time state employes are generally those employes who work 20 hours or less per week; seasonal state employes are generally those employes who work on a full–time basis less than 5 months in a year; and temporary state employes are generally those employes who perform services under a contractual arrangement with the state for a duration of 2 years or less.

In addition, under the bill, the department of employe trust funds (DETF) is required to establish an alternate plan for those part–time, temporary and seasonal

state employes that offers comparable benefits to those provided under social security. Under the plan, each employe is required to have 7.5% of his or her earnings deducted and contributed to the plan. There is no employer contribution. Participation in the plan by all part–time, temporary and seasonal state employes is mandatory, except that these employes may elect coverage under the federal Social Security Act during one of two periods: either no later than 30 days after the employe's initial date of employment with the state or during January of the odd–numbered year. Any part–time, temporary or seasonal state employe who elects coverage under the federal Social Security Act may not participate in the plan.

Under the plan, DETF is required to contract with an individual or organization in the private sector for all administrative and investment services required for the plan. The contract must require the individual or organization to reimburse DETF for all costs incurred directly or indirectly by DETF in implementing, administering and monitoring the plan and must require that the individual or organization indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization violates any applicable provision of the Internal Revenue Code or the federal Social Security Act.

Finally, the bill provides that exclusion from social security coverage of services performed by these part–time, temporary and seasonal state employes and participation in the alternate plan by these employes are prohibited subjects of collective bargaining under the state employment labor relations act.

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 this bill.

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

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

1 **SECTION 1.** 40.41 (6) (g) of the statutes is created to read:

2 40.41 **(6)** (g) Services in state employment beginning on January 1, ~~1999~~ 2001, that

3 are performed by part–time, temporary and seasonal state employes who participate

4 in the alternative OASDHI plan established in subch. X.

5 **SECTION 2.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is

6 created to read:

7 **CHAPTER 40**

SUBCHAPTER X

ALTERNATIVE OASDHI PLAN FOR

PART–TIME, TEMPORARY AND SEASONAL

STATE EMPLOYES

40.98 Alternative OASDHI plan for part–time, temporary and seasonal state employes. (1) In this subchapter:

(a) "Covered employe" means any part–time, temporary or seasonal state employe who is not required by federal law to be covered under OASDHI.

(b) "Part–time state employe" means a state employe who is a part–time employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (A).

(c) "Plan" means the alternative OASDHI plan established under sub. (2).

(d) "Seasonal state employe" means a state employe who is a seasonal employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (B).

(e) "Temporary state employe" means a state employe who is a temporary employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (C).

(2) The department shall establish by rule an alternative OASDHI plan for covered employes. The plan shall comply with all applicable requirements of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI. The plan shall provide comparable benefits to those provided under OASDHI. The department shall provide coverage under the plan to all covered employes beginning on January 1, ~~1999~~ 2001.

(2m) (a) Participation in the plan by all covered employes shall be mandatory, except that covered employes may elect coverage under OASDHI during one of the following periods:

1. No later than 30 days after the covered employe's initial date of employment with the state.

2. During January of the odd–numbered year.

(b) A covered employe may only elect coverage under OASDHI by notifying the department on a form provided by the department.

(c) A covered employe who elects coverage under OASDHI may not participate in the plan.

(3) Contributions under the plan shall be 7.5% of each payment of earnings of the covered employe and shall be paid by the covered employe. The department may increase or decrease the contribution rate by rule, but any such increase or decrease shall be subject to any applicable requirement of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI.

(4) The department shall contract with an individual or organization in the private sector for all administrative and investment services required under the plan.

(5) Any contract entered into by the department under sub. (4) shall do all of the following:

(a) Provide that the individual or organization 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 implementing, administering and monitoring the plan.

(b) Indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization under contract violates

any applicable provision of the Internal Revenue Code or the federal Social Security Act.

(6) Subject to all applicable requirements of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI, all funds in the plan may be invested and reinvested in the same manner provided for investments under s. 881.01 (1).

SECTION 3. 111.91 (2) (~~g~~) of the statutes is created to read:

111.91 **(2)** (~~g~~) Exclusion from social security coverage under s. 40.41 (6) (g) and participation in the plan under subch. X of ch. 40.

SECTION 4. Nonstatutory provisions.

(1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The department of employe trust funds shall submit in proposed form the rules required under section 40.98 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than September 1, ~~1998~~ 2000.

SECTION 5. Initial applicability.

(1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT LABOR RELATIONS ACT. The treatment of section 111.91 (2) (~~g~~) of the statutes first applies to employes who are affected by a collective bargaining agreement that contains provisions inconsistent with that treatment on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

(END)

D-Note

¶ I moved all of the dates in 1997 AB 916 back two years. Is this OK?

RAC

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1713/1dn
RAC:wlj&ksh:lp

January 22, 1999

I moved all of the dates in 1997 AB–916 back two years. Is this OK?

Richard A. Champagne
Legislative Attorney
266–9930

SUBMITTAL FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 1/22/99

To: Representative Plale

Relating to LRB drafting number: LRB-1713

Topic
Coverage under the federal social security act and the creation of an alternate social security plan for certain state employes

Subject(s)
Employ Pub - miscellaneous, Employ Pub - employe benefits

1. **JACKET** the draft for introduction _____

   in the **Senate** ____ or the **Assembly** X (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

   A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

   If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Richard A. Champagne, Legislative Attorney
Telephone: (608) 266-9930

To Drafting File for LRB 99-1713:

Because the intent of the request to draft LRB 99-1713 is to update 1997 AB 916, I have attached the drafting file for 1997 AB 916, which contains the material used to prepare that bill.

Rick Champagne

State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

1997 DRAFTING RECORDS

ASSEMBLY BILL 916

Each drafting record for a proposal (bill, joint resolution, resolution, or an amendment or substitute amendment thereto) consists of:

1) a request sheet or form containing the requester's name and other identifying information relating to that proposal;

2) one or more versions of the drafted proposal; and

3) a copy of the introduced proposal.

These files are created by legislative drafting attorneys during the drafting process, and may contain any written instructions given to the attorney by the requester (including correspondence or model bills) and any notes or memos written by the drafting attorney.

The files will not contain voting records (which are found in the Daily Journal) or transcripts of floor debate or committee hearings (which are not recorded).

Contact LRB Research Analysts at (608) 266–0341 if you have questions concerning the drafting records.

The mailing address is: P.O. Box 2037, Madison, WI 53701–2037.

State of Wisconsin
1997 – 1998 LEGISLATURE

LRB–4653/3
RAC:jlg:jf

1997 ASSEMBLY BILL 916

March 17, 1998 – Introduced by Representatives PLALE, JENSEN, HANSON, DUFF, GROTHMAN, HEBL, KEDZIE, KREUSER, F. LASEE, NASS, PORTER, RILEY, STASKUNAS, WALKER, WASSERMAN and ZIEGELBAUER, cosponsored by Senators RUDE and WELCH. Referred to Joint survey committee on Retirement Systems.

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2 111.91 (2) (o) of the statutes; **relating to:** excluding from coverage under the
3 federal Social Security Act services performed by part–time, seasonal and
4 temporary state employes, establishing an alternative plan with comparable
5 benefits to social security for these part–time, seasonal and temporary state
6 employes and granting rule–making authority.

Analysis by the Legislative Reference Bureau

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In addition, under the bill, the department of employe trust funds (DETF) is required to establish an alternate plan for those part–time, temporary and seasonal

state employes that offers comparable benefits to those provided under social security. Under the plan, each employe is required to have 7.5% of his or her earnings deducted and contributed to the plan. There is no employer contribution. Participation in the plan by all part–time, temporary and seasonal state employes is mandatory, except that these employes may elect coverage under the federal Social Security Act during one of 2 periods: either no later than 30 days after the employe's initial date of employment with the state; or during January of the odd–numbered year. Any part–time, temporary or seasonal state employe who elects coverage under the federal Social Security Act may not participate in the plan.

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Finally, the bill provides that exclusion from social security coverage of services performed by these part–time, temporary and seasonal state employes and participation in the alternate plan by these employes are prohibited subjects of collective bargaining under the state employment labor relations act.

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 this bill.

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

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

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2 40.41 **(6)** (g) Services in state employment beginning on January 1, 1999, that
3 are performed by part–time, temporary and seasonal state employes who participate
4 in the alternative OASDHI plan established in subch. X.

5 **SECTION 2.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is
6 created to read:

7 **CHAPTER 40**

1 SUBCHAPTER X

2 ALTERNATIVE OASDHI PLAN FOR

3 PART–TIME, TEMPORARY AND SEASONAL

4 STATE EMPLOYES

5 **40.98 Alternative OASDHI plan for part–time, temporary and seasonal**
6 **state employes. (1)** In this subchapter:

7 (a) "Covered employe" means any part–time, temporary or seasonal state
8 employe who is not required by federal law to be covered under OASDHI.

9 (b) "Part–time state employe" means a state employe who is a part–time
10 employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (A).

11 (c) "Plan" means the alternative OASDHI plan established under sub. (2).

12 (d) "Seasonal state employe" means a state employe who is a seasonal employe
13 under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (B).

14 (e) "Temporary state employe" means a state employe who is a temporary
15 employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (C).

16 **(2)** The department shall establish by rule an alternative OASDHI plan for
17 covered employes. The plan shall comply with all applicable requirements of section
18 3121 of the Internal Revenue Code relating to plans for state employes that may be
19 alternatives to OASDHI. The plan shall provide comparable benefits to those
20 provided under OASDHI. The department shall provide coverage under the plan to
21 all covered employes beginning on January 1, 1999.

22 **(2m)** (a) Participation in the plan by all covered employes shall be mandatory,
23 except that covered employes may elect coverage under OASDHI during one of the
24 following periods:

1. No later than 30 days after the covered employe's initial date of employment with the state.

2. During January of the odd–numbered year.

(b) A covered employe may only elect coverage under OASDHI by notifying the department on a form provided by the department.

(c) A covered employe who elects coverage under OASDHI may not participate in the plan.

(3) Contributions under the plan shall be 7.5% of each payment of earnings of the covered employe and shall be paid by the covered employe. The department may increase or decrease the contribution rate by rule, but any such increase or decrease shall be subject to any applicable requirement of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI.

(4) The department shall contract with an individual or organization in the private sector for all administrative and investment services required under the plan.

(5) Any contract entered into by the department under sub. (4) shall do all of the following:

(a) Provide that the individual or organization 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 implementing, administering and monitoring the plan.

(b) Indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization under contract violates

1 any applicable provision of the Internal Revenue Code or the federal Social Security
2 Act.

3 **(6)** Subject to all applicable requirements of section 3121 of the Internal
4 Revenue Code relating to plans for state employes that may be alternatives to
5 OASDHI, all funds in the plan may be invested and reinvested in the same manner
6 provided for investments under s. 881.01 (1).

7 **SECTION 3.** 111.91 (2) (o) of the statutes is created to read:

8 111.91 **(2)** (o) Exclusion from social security coverage under s. 40.41 (6) (g) and
9 participation in the plan under subch. X of ch. 40.

10 **SECTION 4. Nonstatutory provisions.**

11 (1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The
12 department of employe trust funds shall submit in proposed form the rules required
13 under section 40.98 (2) of the statutes, as created by this act, to the legislative council
14 staff under section 227.15 (1) of the statutes no later than September 1, 1998.

15 **SECTION 5. Initial applicability.**

16 (1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT
17 LABOR RELATIONS ACT. The treatment of section 111.91 (2) (o) of the statutes first
18 applies to employes who are affected by a collective bargaining agreement that
19 contains provisions inconsistent with that treatment on the day on which the
20 collective bargaining agreement expires or is extended, modified or renewed,
21 whichever occurs first.

22 **(END)**

FISCAL ESTIMATE
DOA-2048 N(R10/94)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTED

LRB 2

1997 Session
LRB or Bill No/Adm Rule No. AB 916 (-4653)
Amendment No. If Applicable

Subject
Excluding part-time, seasonal and temporary state employes from Social Security Coverage

Fiscal Effect
State: ☐ No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

☐ Increase Existing Appropriation
☐ Decrease Existing Appropriation
☐ Create New Appropriation
☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No
☒ Decrease Costs

Local: ☐ No local government costs
1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others _____
☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This bill excludes certain state employes from coverage under the federal Social Security System. Part-time, seasonal and temporary state employes (as defined under federal law) would be excluded from Social Security coverage, but would be included in an alternate plan administered by the Department of Employe Trust Funds (DETF). However, these employes may elect to be covered by social security instead of the alternate plan within 30 days of initial employment or during January of odd-numbered years. Employes will be required to contribute 7.5% of earnings toward the alternate plan; there will be no state (employer) contributions toward this plan.

This fiscal estimate addresses the fiscal impact on the state's social security contributions; it does not reflect costs of DETF for administration of the contract for the plan.

Based on the federal definitions, the Department used the following interpretations to estimate the number of employes who would be covered by AB 916:

Part-time - employes who normally work 20 hours or less per week. This is interpreted to include all unclassified and permanent part-time employes with an FTE (full-time equivalency) of .5 or less, and all permanent employes in project positions with an FTE of .5 or less.
· Seasonal - employes who normally work on a full-time basis less than 5 months in a year. This is interpreted to include all of the "seasonal employes" in state service.
· Temporary - employes performing services under a contractual arrangement with the employer of 2 years or less duration. This is interpreted to include all limited term employes and all project employes in project positions, regardless of FTE.

Based on the above definitions, DER estimates the following number of employes would be covered by the bill:

Employe Category	Number of Employes	Annual Payroll
Part-time	2,059	$29,099,570
Seasonal	328	$7,360,000
Temporary	6,426	$76,451,599
UW System Faculty, Academic Staff and teaching and research assistants	7,100	$77,165,439
Total	15,913	$190,076,608

Data is from January 1998; UW data was provided by UW System

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Department of Employment Relations
Bob Van Hoesen/267-1003

Authorized Signature/Telephone No.
Robert Van Hoesen

Date
6-26-98

The fiscal impact of this bill on the state will result from the state no longer paying the employer Social Security contribution (6.2%) on behalf of the excluded employes. (The Medicare contribution of 1.45% must still be paid by the employer.)

Employes will be automatically covered by the alternate plan unless they choose to be covered by Social Security. Employes will be able to opt out of the alternate plan and into Social Security upon initial appointment and in January of odd-numbered years. This "opt out" provision makes it impossible to estimate how many employes will participate in the alternate plan and what their combined payroll will be. The following chart shows a range of impacts depending on varying rates of employe participation in the alternate plan.

Percentage of employes who participate in alternate plan.	Annual Payroll (all funds)	Annual Savings (employer contribution of 6.2%)(all funds)	GPR portion of savings (45.93% of total)	Other Funds portion of savings (54.07%)
100%	$190,076,608	$11,784,750	$5,412,736	$6,372,014
50%	$95,038,304	$5,892,375	$2,706,368	$3,186,007
10%	$19,007,661	$1,178,475	$541,274	$637,201

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

DOA-2047 (R10/94)

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

1997 Session

LRB or Bill No/Adm. Rule No.	Amendment No.
AB 916	

Subject Excluding part-time, seasonal and temporary state employes from Social Security Coverage

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	**Annualized Fiscal Impact on State Funds from:**	
	Increased Costs	**Decreased Costs**
A. State Costs by Category		
State Operations - Salaries and Fringes		
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		
Local Assistance		
Aids to Individuals and Organizations		
TOTAL State Costs by Category	$ -	
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR		
FED		(See Narrative)
PRO/PRS		
SEG/SEG-S		
II. State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.	**Increased Rev.**	**Decreased Rev.**
GPR Taxes		
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues		

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
IET CHANGE IN COSTS		
ET CHANGE IN REVENUES		

gency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Department of Employment Relations Bob Van Hoesen/267-1003	Robert Van Hoesen	6-26-98

1997 DRAFTING REQUEST

Bill

Received: **01/2/98**

Received By: **champra**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-0610**

By/Representing: **Mary**

This file may be shown to any legislator: **NO**

Drafter: **champra**

May Contact:

Alt. Drafters:

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

Extra Copies:

Topic:

private retirement plan for certain state employes

Instructions:

See Attached.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	champra 01/20/98	jgeller 01/27/98	martykr 01/27/98	_____ _____	lrb_docadmin 01/27/98		State Retire
/1	champra 02/3/98	jgeller 02/3/98	lpaasch 02/4/98	_____ _____	lrb_docadmin 02/4/98		State Retire
/2	champra 02/16/98	jgeller 02/16/98	martykr 02/16/98	_____ _____	lrb_docadmin 02/16/98		State Retire
/3	champra 02/26/98	jgeller 02/26/98	jfrantze 02/26/98	_____ _____	lrb_docadmin 02/26/98	lrb_docadmin 02/27/98	State Retire

FE Sent For: G 03-17-98

<END>

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3-2-26-98 KG

FE Sent For:

2/26 <END>
2/26

LRB-4653

1997 DRAFTING REQUEST

Bill

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Received By: **champra**

Wanted: **As time permits**

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By/Representing: **Mary**

This file may be shown to any legislator: **NO**

Drafter: **champra**

May Contact:

Alt. Drafters:

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

Extra Copies:

Topic:

private retirement plan for certain state employes

Instructions:

See Attached.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	champra 01/20/98	jgeller 01/27/98	martykr 01/27/98	_____ _____	lrb_docadmin 01/27/98		State Retire
/1	champra 02/3/98	jgeller 02/3/98	lpaasch 02/4/98	_____ _____	lrb_docadmin 02/4/98		State Retire

2-2-16-98

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<END>

1997 DRAFTING REQUEST

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Instructions:

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		1-2-3-98 JCG	2-3 LR.	2-3 LR. IS			

FE Sent For:

<END>

LRB-4653

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May Contact:

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

Extra Copies:

Topic:

private retirement plan for certain state employes

Instructions:

See Attached.

Please submit "P" draft

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	champra	P1-1-27-98 JKG	km 1/27	km 1/27			

FE Sent For:

<END>

EXPLANATION OF LEGISLATION

Prior to July 2, 1991, Social Security coverage of state and local employees was not required as it was for private sector employees, but the state, at its option, could obtain coverage for all or certain segments of its employees through an agreement with the Social Security Administration pursuant to section 218 of the Social Security Act (called a "Section 218 Agreement"). Wisconsin first entered into a Section 218 Agreement with the Social Security Administration in 1951, and over the years has added a number of its employees to the Social Security coverage. Part-time, temporary and seasonal employees of the state, however, were excluded from the original Section 218 Agreement and were not included in any later modifications.

Under the Omnibus Budget Reconciliation Act of 1990 ("OBRA"), Congress amended the Social Security Act and required that all part-time, temporary and seasonal employees be covered by Social Security unless they are covered by a separate state retirement system and were excluded from Social Security coverage by earlier Section 218 Agreements. As a result, OBRA allows such government instrumentalities, including the state of Wisconsin, to opt-out of Social Security and instead open up a private retirement plan for all of their part-time, temporary and seasonal employees.

The proposed legislation directs the state to create a private retirement plan for all of the state's part-time, temporary and seasonal employees. The effect of such private plan will be to eliminate the state's matching contribution to Social Security. Social Security contributions are replaced with a 7.5% (pre-taxed) employee contribution (7.5% pre-tax is equivalent to 6.2% after-tax, the current Social Security contribution). This allows the state to keep its Social Security portion of the FICA taxes and have affected employees invest their contributions in a plan that qualifies under section 3121 of the Internal Revenue Code.

The legislation also directs that the private retirement plan be established with a private provider so that the Plan and its participants, not the state, will bear the cost of the Plan.

The Plan established by the legislation will not remove an employee from Social Security benefits already achieved or prevent a participant from participating in Social Security if they are simultaneously working elsewhere and paying Social Security taxes, or if they terminate employment with the state plan and engage in future employment subject to Social Security coverage. Any employment other than the part-time, temporary or seasonal employment with the state will continue to be subject to Social Security coverage as required by federal law, and the participant will continue to receive any benefits earned.

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DRAFTING INSTRUCTIONS

Legislation should be prepared to provide that by January 1, 1999, the Department of Employee Trust Funds shall issue a request for proposal or negotiate a contract for the implementation by July 1, 1999, of a private retirement program pursuant to Internal Revenue Code, Section 3121, for all eligible part-time, seasonal, and temporary employees. Eligibility will be determined by the Department. The program shall provide for plan administration by an experienced private party at no direct cost to the state and shall provide comparable, or to the extent possible, equivalent benefits to those provided under the Social Security Act.

The request for proposal or negotiated contract shall provide that the vendor must be experienced with such plans, and provide a written investment plan which is designated to address issues of safety, liquidity, yield, experience and prudent managerial expertise upon which the Department shall assign a valuation for purposes of selection. The proposal or negotiated contract may require adherence to any investment limitations provided by Wisconsin Statute or rules and shall require that the successful vendor provide market risk or volatility ratings from recognized rating agencies for each of its investment products.

The Department may secure the services of other public agencies for the purpose of evaluating the proposals, including the appropriateness of the investment vehicles or objectives chosen by a responding party for the given level of risk. The proposals shall be evaluated and the contract awarded in sufficient time for the optional retirement plan to be implemented on July 1, 1999.

Upon award of a contract, the Department shall provide for a system of oversight to insure that the investment objectives of the program and the operational practices of the vendor are within the terms of the contract and represent the continuous exercise of prudent managerial judgment. The successful vendor shall indemnify the state of Wisconsin, its agencies and participating employees from any adverse tax consequences to the extent the services provided by such vendor violate applicable provisions of the Social Security Act and the Internal Revenue Code. No state agency shall enter into an optional Social Security retirement program unless the preceding conditions are met.

The Department may promulgate rules for the implementation of these statutory sections.

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DEFERRED COMPENSATION RETIREMENT PLAN FOR PART-TIME, TEMPORARY, AND SEASONAL OR CASUAL EMPLOYEES

State deferred compensation retirement plan for part-time, temporary, and seasonal or casual employees. The state shall establish a deferred compensation retirement plan in accordance with sections 457 and 3121 of the Internal Revenue Code of 1986, as amended, for the benefit of part-time, temporary or seasonal employees to defer a portion of their compensation to a future period of time. Participation in the plan shall be mandatory, with a mandatory payroll deduction by the employee equal to seven and five-tenths per cent of the employee's gross monthly wages, which shall be contributed to the plan. This rate may be changed by the state by regulation.

Cost of the plan. Costs for implementing and administering the Plan shall be borne by the plan and its participants, except for incidental expenses, such as the cost of payroll deductions and the routine processing of forms.

Existing retirement and deferred compensation plans. This Plan shall not affect any existing retirement or deferred compensation plans established under section 457 of the Internal Revenue Code of 1986, as amended.

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10-N 000 1

State of Wisconsin
1997 – 1998 LEGISLATURE

LRB–4653/P1
RAC:.:....

by Fri 1/30 or sooner jlg

~~DRAFT~~

PRELIMINARY DRAFT – ~~NOT~~ READY FOR INTRODUCTION

gen cat

AN ACT ...; **relating to:** eliminating coverage for certain part–time, seasonal and temporary state employes under the federal social security act, establishing a retirement plan for these part–time, seasonal and temporary state employes and granting rule–making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent draft.

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 this bill.

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

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

SECTION 1. 40.41 (6) (g) of the statutes is created to read:

40.41 **(6)** (g) Services in state employment beginning on July 1, 1999, that are performed by part–time, temporary, seasonal or casual state employes who participate in the retirement plan established in subch. X.

1 **SECTION 2.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is
2 created to read:

3 **CHAPTER 40**

4 SUBCHAPTER X

5 RETIREMENT PLAN FOR PART–TIME, TEMPORARY,

6 SEASONAL AND CASUAL STATE EMPLOYES

hard return

7 **40.98 Retirement plan for part–time, temporary, seasonal and casual**
8 **state employes. (1)** In this subchapter:

9 (a) "Covered employe" means any part–time, temporary, seasonal or casual
10 state employe who is not a participating employe and who the department
11 determines is not required by federal law to be covered under OASDHI.

12 (b) "Retirement plan" means the retirement plan established under sub. (2).

13 **(2)** The department shall establish by rule a retirement plan for covered
14 employes that is in accordance with section 457 of the Internal Revenue Code.
15 Participation in the retirement plan by all covered employes shall be mandatory. The
16 retirement plan shall provide comparable benefits to those provided under OASDHI.
17 The department shall provide coverage under the plan to all covered employes
18 beginning on July 1, 1999.

19 **(3)** Contributions under the retirement plan shall be 7.5% of each payment of
20 earnings of the covered employe and shall be paid by the covered employe. The
21 department may increase or decrease the contribution rate by rule.

22 **(4)** The department shall contract with an individual or organization in the
23 private sector for all administrative and investment services required under the
24 retirement plan.

1 **(5)** Any contract entered into by the department under sub. (4) shall do all of
2 the following:
3 (a) Provide that the individual or organization reimburse the department, to
4 be credited to the administrative account of the public employe trust fund in s. 40.04
5 (2), for any costs incurred directly or indirectly by the department in implementing,
6 administering and monitoring the retirement plan.
7 (b) Indemnify the state and all state employes against all costs, liabilities and
8 expenses that may result if the individual or organization under contract violates
9 any applicable provision of the Internal Revenue Code.
10 **(6)** All funds in the retirement plan may be invested and reinvested in the same
11 manner provided for investments under s. 881.01 (1).
12 **SECTION 3.** 111.91 (2) (o) of the statutes is created to read:
13 111.91 **(2)** (o) Exclusion from ~~OASDHI~~ social security coverage under s. 40.41 (6) (g) and
14 participation in the retirement plan under subch. X of ch. 40.
15 **SECTION 4. Nonstatutory provisions.**
16 (1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The
17 department of employe trust funds shall submit in proposed form the rules required
18 under section 40.98 (2) of the statutes, as created by this act, to the legislative council
19 staff under section 227.15 (1) of the statutes no later than January 1, 1999.
20 **SECTION 5. Initial applicability.**
21 (1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT
22 LABOR RELATIONS ACT. The treatment of section 111.91 (2) (o) of the statutes first
23 applies to employes who are affected by a collective bargaining agreement that
24 contains provisions inconsistent with that treatment on the day on which the

1 collective bargaining agreement expires or is extended, modified or renewed,
2 whichever occurs first.
3 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/P1dn
RAC:

Representative Plale:

1. For the purpose of expediting the draft, I have required that the department of employe trust funds (DETF) determine which part–time, temporary, seasonal and casual state employes are not required by federal law to be covered by the social security act. Is this OK? Also, please note that the retirement plan will not cover state employes who are participating employes in the Wisconsin retirement system (WRS). If you wish to cover part–time, temporary, seasonal and casual state employes who are currently participants in the WRS and exclude them from WRS coverage, then the draft will be considerably more complicated. Please advise.

2. I have required DETF to establish the specific provisions of the retirement plan by rule. Under the draft, DETF will have to submit the proposed rules to the ~~legislature~~ council staff by January 1, 1999. In this way, the rules should be promulgated in time for coverage under the plan to begin on July 1, 1999.

3. Per your request, I have required that the plan be in accordance with section 457 of the Internal Revenue Code. I did not require that the plan be in accordance with section 3121 of the Internal Revenue Code, as I am unsure what provisions in that section require compliance. It seems that if DETF is charged with determining which state employes are eligible for participation in the plan, then it is unnecessary to require mention of section 3121. Please advise.

4. I have required DETF to contract with an individual or organization in the private sector for all administrative and investment services required for the plan. The draft also provides that DETF will be reimbursed by the provider for expenses incurred by DETF with respect to the plan. In this way, DETF will not incur any unreimbursed costs with respect to the plan.

5. I included the requirement that the plan must provide comparable benefits to those under the Social Security Act. I wonder if this is possible since the state will not be contributing anything at all on behalf of each employe as it currently does under social security. Stated differently, is this requirement capable of achievement if all that is being contributed to the plan is 7.5% of each employe's salary?

6. I required that the plan provider indemnify the state and all state employes against all costs, liabilities and expenses that may result if the plan provider violates any applicable provision of the Internal Revenue Code. I did not include any applicable

provision of the Social Security Act, since DETF must determine which employes are not required under federal law to be covered by social security. Is this consistent with your intent?

7. Finally, please note that I prepared this draft as a preliminary draft. Please carefully review the draft to make certain that it is consistent with your intent. Also, you may wish to consider having DETF review the draft for technical considerations.

Richard A. Champagne
Legislative Attorney
266–9930

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/P1dn
RAC:jlg:km

Tuesday, January 27, 1998

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266–9930

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To Don Stitt	From Bruce Nelson	
Co./Dept.	Co.	
Phone # 608-255-4440	Phone # 800-430-7997	
Fax # 608-256-7138	Fax #	

January 29, 1998

Richard A. Champagne
Legislative Attorney
100 North Hamilton Street
Madison, Wisconsin 53701

Dear Mr. Champagne,

My office represents MidAmerica Management, Inc. MidAmerica is the administrative implementor of the plan you are considering under Section 3121 of the Internal Revenue Code. I have worked with MidAmerica since their inception and believe that I am fairly familiar with the requirements under Section 3121. I have discussed the Code, treasury regulations, and IRS interpretation at considerable length with those individuals in Chief Counsel's office who were responsible for the drafting and implementation of the treasury regulations. I was previously employed with Chief Counsel's office and feel that they did extend me a somewhat expanded courtesy in discussing the various 3121 issues.

I have been provided with a draft of your proposed letter to Representative Plale, dated January 27, 1998, as well as the preliminary draft of the Proposed Legislation. My client, MidAmerica, has asked me to respond to your letter.

I realize that for someone who does not work with the Internal Revenue Code on a daily basis, the interpretation of the Code and the treasury regulations can be difficult. Please understand that it is neither my desire nor intention to be in any way critical, but rather to be helpful in your understanding of Section 3121. I believe that most of the information which I share with you will be of a housekeeping nature and may assist in the understanding of Section 3121. I will address your letter by paragraph:

1. In the last sentence you referenced the type of employees who are covered under Section 3121. 3121 specifically provides coverage for "part-time, temporary and seasonal employees". A reference to "casual state employees" is outside of the definitional parameters of Section 3121. You also referenced "W.R.S.", which we have been

told stands for Wisconsin Retirement System. Section 3121 provides an alternative to social security. Section 3121 is not a retirement plan, any more than is social security. A 3121 Plan is not what we are use to referring to as a traditional retirement plan; it is a social security alternative. The election of the 3121 Social Security Alternative Plan has no effect whatsoever on an employees participation in the State sponsored retirement plan Therefore, Wisconsin's election of the 3121 Alternative Plan will have no effect on whether or not an employee covered under 3121 is also participating in W.R.S.

2. Based upon my discussions with MidAmerica, I believe that the State of Wisconsin will save approximately one million dollars per month as a consequence of electing the 3121 Social Security Alternative Plan. You may want to consider implementing this alternative at the earliest possible opportunity

3. There is generally confusion over the relationship of Section 3121 and the deferred compensation sections such as 457. A 3121 plan may specifically be utilized in conjunction with a 457 plan in order to give the employees the opportunity to fund the 3121 Social Security Alternative with tax deferred income. That notwithstanding, 3121 is the specific Social Security Alternative Plan, not Section 457. The legislation must specifically refer to Section 3121 and need not make any reference whatsoever to a deferred comp. Implementation vehicle.

4. I have suggested to my client that some provisions should be made for a ceiling on the expenses to be reimbursed to Wisconsin.

5. The treasury regulations under Code Section 3121 provide specifically for the type of investments to made by the 3121 Plan. Certainly, it is the legislative intent that these benefits be comprable to social security benefits. I suggest that the legislation language should require compliance with the provisions of 3121 and avoid any further definitional language.

6. I have just one observation in connection with paragraph six. In the second to last sentence you state "...are not required under Federal Law to be covered by social security." Our experience has led us to the conclusion that most state and local employees who are of the part-time, seasonal or temporary nature have either already earned their forty social security quarters or anticipate earning them through future employment. I believe we must be careful to avoid utilization of any language which would lead anyone to believe that these employees are being eliminate from social security coverage.

> Employees who have already earned social security quarters will of course retain those social security earnings. Additionally, employees who earn social security quarters in the future will be covered under those quarters. This is not an elimination of social security coverage for employment prior or subsequent to their employment as a part-time, temporary or seasonal employee with the State. Code Section 3121 is an alternative to social security but does not eliminate existing or future social security coverage.

At the risk of being presumptuous, I have taken the liberty of enclosing a revised draft of the legislation which you have proposed. I would very much welcome the opportunity to discuss these issues with you and might even be able to prevail upon my client to send me up to Wisconsin if a face-to-face meeting would be helpful. I realize it is my client's desire to be of as much assistance as possible and I, like wise, am here to provide any help possible.

Sincerely,

Ronald T. Murphy

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT *to create* 40.41 (6) (g), subchapter X of chapter 40 [precedes 40.98] and 111.91 (2) (o) of the statutes; **relating to:** providing alternative social security program for certain part-time, seasonal and temporary state employees under Internal Revenue Code Section 3121.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent draft. This bill will be referred to the joint survey committee on retirement systems for a detailed analysis, which will printed as an appendix to this bill.
For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

Section 1. 40.41 (6) (g) of the statutes is created to read:

40.41 (6) (g) Services in state employment beginning on January 1, 1999, that are performed by part-time, temporary or seasonal state employees who participate in the Social Security Alternative Plan established in subchapter X.

Section 2. Subchapter X of chapter 40 [precedes 40.98] of the statutes is created to read.

CHAPTER 40

SUBCHAPTER X

SOCIAL SECURITY ALTERNATIVE PLAN

FOR PART-TIME, TEMPORARY AND

SEASONAL STATE EMPLOYEES

40.98 Social Security Alternative plan for part-time, temporary and seasonal state employees. (1) In this subchapter:

(a) "Covered employee" means any part-time, temporary and seasonal state employee as defined in Code Section 3121 and who is not otherwise required by federal law to be covered under OASDHI

(b) "Plan" means the 3121 Plan established under sub. (2).

(2) The department shall establish by rule a Plan for covered employees that is in accordance with Section 3121 of the Internal Revenue Code. Participation in the Plan by all covered employees shall be mandatory. The Plan shall provide comparable benefits to those provided under OASDHI, as required by Section 3121. The department shall provide coverage under the Plan to all covered employees beginning on January 1, 1999.

(3) Contributions under the Plan shall be 7.5% of each payment of earnings of the covered employee and shall be paid by the covered employee. The department may increase or decrease the contribution rate as permitted by Code 3121.

(4) The department shall contract with an individual or organization in the private sector for all administrative and investment services required under the Plan.

(5) Any contract entered into by the department under sub. (4) shall do all of the following:

(a) Provide that the individual or organization reimburse the department, to be credited to the administrative account of the public employee trust fund in s. 40.04 (2), for any costs incurred directly by the department in implementing, administering and monitoring the retirement plan.

(b) Indemnify the state and all state employees against all costs, liabilities and expenses that may result if the individual or organization under contract violates any applicable provision of the Internal Revenue Code.

(6) All funds in the Plan may be invested and reinvested in the same manner provided for investments under s. 881 01 (1) in accordance with Code 3121.

Section 3. 111.91 (2) (o) of the statutes is created to read.

111.91 (2) (o)Alternative Social Security coverage under 40.41 (6) (g) and participation in the retirement plan under such. X of ch. 40.

Section 4. Nonstatutory provisions.

(1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL

STAFF. The department of employee trust funds shall submit in proposed form the rules required under section 40.98 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than January 1, 1999.

Section 4. Initial applicability.

(1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT LABOR RELATIONS ACT. The treatment of section 111.91 (2) (o) of the statutes first applies to employees who are affected by a collective bargaining agreement that contains provisions inconsistent with that treatment on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

(D-Nov)

State of Wisconsin
1997 – 1998 LEGISLATURE

LRB-4653/P1 1
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Friday

Redraft order has been run

-13/98

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

with comparable benefits

~~[illegible]~~ to social security

on alternative

under the federal Social Security Act for services performed by

Regen

1 AN ACT *to create* 40.41 (6) (g), subchapter X of chapter 40 [precedes 40.98] and
2 111.91 (2) (o) of the statutes; **relating to:** eliminating coverage ~~for certain~~
3 part–time, seasonal and temporary state employes ~~under the federal Social~~
4 ~~Security Act~~, establishing ~~a retirement~~ plan for these part–time, seasonal and
5 temporary state employes and granting rule–making authority.

---

insert Analysis

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a subsequent draft.~~

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 this bill.

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

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

6 **SECTION 1.** 40.41 (6) (g) of the statutes is created to read:

40.41 (6) (g) Services in state employment beginning on July 1, 1999, that are performed by part–time, temporary, seasonal or casual state employes who participate in the retirement plan established in subch. X.

SECTION 2. Subchapter X of chapter 40 [precedes 40.98] of the statutes is created to read:

CHAPTER 40

SUBCHAPTER X

RETIREMENT PLAN FOR PART–TIME, TEMPORARY, SEASONAL AND CASUAL STATE EMPLOYES

40.98 Retirement plan for part–time, temporary, seasonal and casual state employes. (1) In this subchapter:

(a) "Covered employe" means any part–time, temporary, seasonal or casual state employe who is not a participating employe and who the department determines is not required by federal law to be covered under OASDHI.

(b) "Retirement plan" means the retirement plan established under sub. (2).

(2) The department shall establish by rule a retirement plan for covered employes that is in accordance with section 457 of the Internal Revenue Code. Participation in the retirement plan by all covered employes shall be mandatory. The retirement plan shall provide comparable benefits to those provided under OASDHI. The department shall provide coverage under the plan to all covered employes beginning on July 1, 1999.

(3) Contributions under the retirement plan shall be 7.5% of each payment of earnings of the covered employe and shall be paid by the covered employe. The department may increase or decrease the contribution rate by rule.

(4) The department shall contract with an individual or organization in the private sector for all administrative and investment services required under the ~~retirement~~ plan.

(5) Any contract entered into by the department under sub. (4) shall do all of the following:

(a) Provide that the individual or organization 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 implementing, administering and monitoring the ~~retirement~~ plan.

(b) Indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization under contract violates any applicable provision of the Internal Revenue Code or the federal Social Security Act.

(6) ~~All~~ funds in the ~~retirement~~ plan may be invested and reinvested in the same manner provided for investments under s. 881.01 (1).

SECTION 3. 111.91 (2) (o) of the statutes is created to read:

111.91 **(2)** (o) Exclusion from social security coverage under s. 40.41 (6) (g) and participation in the ~~retirement~~ plan under subch. X of ch. 40.

SECTION 4. Nonstatutory provisions.

(1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The department of employe trust funds shall submit in proposed form the rules required under section 40.98 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than ~~January 1, 1999~~ September 1, 1998.

SECTION 5. Initial applicability.

(1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT LABOR RELATIONS ACT. The treatment of section 111.91 (2) (o) of the statutes first

1 applies to employes who are affected by a collective bargaining agreement that
2 contains provisions inconsistent with that treatment on the day on which the
3 collective bargaining agreement expires or is extended, modified or renewed,
4 whichever occurs first.

5 (END)

1997–1998 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/1ins
RAC:jlg:km

Insert Analysis:

Under current law, with certain exceptions, all state employes are included for coverage under the federal Social Security Act. This bill exempts from social security coverage those services performed by part–time, temporary and seasonal state employes, beginning on January 1, 1999, for all part–time, temporary and seasonal state employes who are not otherwise required to be covered under social security. The definitions of part–time, temporary and seasonal state employes are those provided in federal law. Part–time state employes are generally those employes who work 20 hours or less per week; seasonal state employes are generally those employes who work on a full–time basis less than 5 months in a year; and temporary state employes are generally those employes who perform ~~serves~~ under a contractual arrangement with the state for a duration of 2 years or less. services

In addition, under the bill, the department of employe trust funds (DETF) is required to establish an alternate plan for those part–time, temporary and seasonal state employes that offers comparable benefits to those provided under social security. Coverage under this plan is mandatory for all part–time, temporary and seasonal state employes who are not otherwise required to be covered under social security. Under the plan, each employe is required to have 7.5% of his or her earnings deducted and contributed to the plan. There is no employer contribution.

Under the plan, DETF is required to contract with an individual or organization in the private sector for all administrative and investment services required for the plan. The contract must require the individual or organization to reimburse DETF for all costs incurred directly or indirectly by DETF in implementing, administering and monitoring the plan and must require that the individual or organization indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization violates any applicable provision of the Internal Revenue Code or the federal Social Security Act.

Finally, the bill provides that exclusion from ~~social~~ social security coverage of services performed by these part–time, temporary and seasonal state employes and participation in the alternate plan by these employes are prohibited subjects of collective bargaining under the state employment labor relations act.

Insert 2–17:

(b) "Part–time state employe" means a state employe who is a part–time employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (A).

(c) "Plan" means the alternative OASDHI plan established under sub. (2).

(d) "Seasonal state employe" means a state employe who is a seasonal employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (B).

(e) "Temporary state employe" means a state employe who is a temporary employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (C).

Insert 2–19:

an alternative OASDHI plan for covered employes. The plan shall comply with all applicable requirements of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI.

Insert 2–25:

, but any such increase or decrease shall be subject to any applicable requirement of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI

Insert 3–13:

Subject to all applicable requirements of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI, all

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/1dn
RAC:jlg:km
stays

Representative Plale:

The revisions in this draft are based on the instructions from Ronald Murphy of Lakeland, Florida in his January 29, 1998, memorandum that I received from your office. Where his instructions and the instructions of the original request conflict, I have generally followed Mr. Murphy's instructions. Is this your intent? Again, I recommend that you have the department of employe trust funds (DETF) review this draft for technical and administrative issues. In particular, DETF may be able to provide guidance on the following:

1. The original instructions had an implementation date of July 1, 1999. The revised instructions, however, had an implementation date of January 1, 1999. If we assume that the earliest this legislation can pass is in March and the earliest that it can be signed into law is April, I am uncertain if DETF can promulgate rules and enter into contracts by January 1, 1999.

2. Currently, all state employes who are participating employes in the Wisconsin retirement system (WRS) are included for coverage under the federal Social Security Act. There exists a section 218 agreement between Wisconsin and the federal government to provide social security coverage for services performed by state employes who are participating employes of the WRS. 42 USC 418 (i). Exclusion from social security coverage of those services performed by part–time, temporary and seasonal state employes who are participating employes in the WRS without a modification of this agreement may not be permissible. At this point in time, I cannot answer this question with certainty. If you wish for me to prepare a legal memorandum on this issue, I will be more than happy to if time permits. In the meantime, you may wish to speak with DETF concerning what modifications in the section 218 agreement have occurred to date and what modifications, if any, may be required in order to implement this bill.

3. Per Mr. Murphy's instructions, I have used the definitions of part–time, temporary and seasonal employes that are provided under federal law. I assume that the cross–references to the CFR I have identified are the correct ones. Please note that these definitions do not follow precisely the categories for Wisconsin state government employment. As a result, it may be administratively difficult to track precisely which state employe part–time, limited term and project positions are covered under this alternative plan. The department of employe trust funds may have suggestions as to

how such tracking can be accomplished and if any changes in law are required in the civil service law to track these employes.

If you have any questions about this draft or any other issues, please do not hesitate to contact me.

Richard A. Champagne
Legislative Attorney
266–9930

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/1dn
RAC:jlg:lp

Tuesday, February 3, 1998

Representative Plale:

The revisions in this draft are based on the instructions from Ronald Murphy of Lakeland, Florida in his January 29, 1998, memorandum that I received from your office. Where his instructions and the instructions of the original request conflict, I have generally followed Mr. Murphy's instructions. Is this your intent? Again, I recommend that you have the department of employe trust funds (DETF) review this draft for technical and administrative issues. In particular, DETF may be able to provide guidance on the following:

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how such tracking can be accomplished and if any changes in law are required in the civil service law to track these employes.

If you have any questions about this draft or any other issues, please do not hesitate to contact me.

Richard A. Champagne
Legislative Attorney
266–9930

MidAmerica Management Incorporated

FAX TRANSMISSION

To:	Jeff Plale	**Date:**	February 10, 1998
Fax #:	(608) 282-3621	**Pages:**	7, including this cover sheet.
From:	Bruce Nelson		
Subject:	Wisconsin		

Rick - 2/11/98

Please make these additional changes.

Thanks!

Jeff

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February 10, 1998

Richard A. Champagne
Legislative Attorney
100 North Hamilton Street
Madison, Wisconsin 53701

Dear Mr. Champagne,

I have reviewed your letter of February 3, 1998 to Representative Plale. At the risk of being presumptuous, I am going to share with you a few more thoughts in order to make sure this is as fine tuned as possible. I am doing this through minor revisions to the "Bill".

You will note that my focus is on the use of the term "exclusion" as it relates to social security coverage. I suggest that the proper phraseology is that for so long as an employee maintains his status as temporary, part-time or seasonal, he is exempted from Social Security contributions through the use of a social Security alternative.

Please feel free to give me a call if you have any questions.

Sincerely,

Ronald T. Murphy

State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4653/1
RAC:jlg:lp

1997 BILL

1 AN ACT *to create* 40.41 (6) (g), subchapter X of chapter 40 [precedes 40.98] and
2 111.91 (2) (c) of the statutes; relating to: ~~eliminating~~ exempting coverage under the
3 federal Social Security Act for services performed by part-time, seasonal and
4 temporary state employes, establishing an alternative plan with comparable
5 benefits to social security for these part-time, seasonal and temporary state
6 employes and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, all state employes are included for coverage under the federal Social Security Act. This bill exempts from social security coverage those services performed by part-time, temporary and seasonal state employes, beginning on January 1, 1999, for all part-time, temporary and seasonal state employes who are not otherwise required to be covered under social security. The definitions of part-time, temporary and seasonal state employes are those provided in federal law. Part-time state employes are generally those employes who work 20 hours or less per week; seasonal state employes are generally those employes who work on a full-time basis less than 5 months in a year; and temporary state employes are generally those employes who perform services under a contractual arrangement with the state for a duration of 2 years or less.

In addition, under the bill, the department of employe trust funds (DETF) is required to establish an alternate plan for those part-time, temporary and seasonal

state employes that offers comparable benefits to those provided under social security. Coverage under this plan is mandatory for all part-time, temporary and seasonal state employes who are not otherwise required to be covered under social security. Under the plan, each employe is required to have 7.5% of his or her earnings deducted and contributed to the plan. There is no employer contribution.

Under the plan, DETF is required to contract with an individual or organization in the private sector for all administrative and investment services required for the plan. The contract must require the individual or organization to reimburse DETF for all costs incurred directly or indirectly by DETF in implementing, administering and monitoring the plan and must require that the individual or organization indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization violates any applicable provision of the Internal Revenue Code or the federal Social Security Act.

Finally, the bill provides that ~~exclusion from~~ exempting social security coverage of services performed by these part-time, temporary and seasonal state employes and participation in the alternate plan by these employes are prohibited subjects of collective bargaining under the state employment labor relations act.

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 this bill.

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

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

1 **SECTION 1.** 40.41 (6) (g) of the statutes is created to read:

2 40.41 (6) (g) Services in state employment beginning on January 1, 1999, that
3 are performed by part-time, temporary and seasonal state employes who participate
4 in the alternative OASDHI plan established in subch. X.

5 **SECTION 2.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is
6 created to read:

7 **CHAPTER 40**

8 **SUBCHAPTER X**

9 **ALTERNATIVE OASDHI PLAN FOR**

PART-TIME, TEMPORARY AND SEASONAL STATE EMPLOYES

40.98 Alternative OASDHI plan for part-time, temporary and seasonal state employes. (1) In this subchapter:

(a) "Covered employe" means any part-time, temporary or seasonal state employe who is not required by federal law to be covered under OASDHI.

(b) "Part-time state employe" means a state employe who is a part-time employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (A).

(c) "Plan" means the alternative OASDHI plan established under sub. (2).

(d) "Seasonal state employe" means a state employe who is a seasonal employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (B).

(e) "Temporary state employe" means a state employe who is a temporary employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (C).

(2) The department shall establish by rule an alternative OASDHI plan for covered employes. The plan shall comply with all applicable requirements of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI. Participation in the plan by all covered employes shall be mandatory. The plan shall provide comparable benefits to those provided under OASDHI. The department shall provide coverage under the plan to all covered employes beginning on January 1, 1999.

(3) Contributions under the plan shall be 7.5% of each payment of earnings of the covered employe and shall be paid by the covered employe. The department may increase or decrease the contribution rate by rule, but any such increase or decrease shall be subject to any applicable requirement of section 3121 of the Internal

1 Revenue Code relating to plans for state employes that may be alternatives to
2 OASDHI.
3 (4) The department shall contract with an individual or organization in the
4 private sector for all administrative and investment services required under the
5 plan.
6 (5) Any contract entered into by the department under sub. (4) shall do all of
7 the following:
8 (a) Provide that the individual or organization reimburse the department, to
9 be credited to the administrative account of the public employe trust fund in s. 40.04
10 (2), for any costs incurred directly or indirectly by the department in implementing,
11 administering and monitoring the plan.
12 (b) Indemnify the state and all state employes against all costs, liabilities and
13 expenses that may result if the individual or organization under contract violates
14 any applicable provision of the Internal Revenue Code or the federal Social Security
15 Act.
16 (6) Subject to all applicable requirements of section 3121 of the Internal
17 Revenue Code relating to plans for state employes that may be alternatives to
18 OASDHI, all funds in the plan may be invested and reinvested in the same manner
19 provided for investments under s. 881.01 (1).
20 SECTION 3. 111.91 (2) (c) of the statutes is created to read:
21 111.91 (2) (c) Exclusion from social security coverage under s. 40.41 (3) (g) and
22 participation in the plan under subch. X of ch. 40.
23 SECTION 4. Nonstatutory provisions.
24 (1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The
25 department of employe trust funds shall submit in proposed form the rules required

1 under section 40.98 (2) of the statutes, as created by this act, to the legislative council
2 staff under section 227.15 (1) of the statutes no later than September 1, 1998.

3 SECTION 5. Initial applicability.

4 (1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT
5 LABOR RELATIONS ACT. The treatment of section 111.91 (2) (c) of the statutes first
6 applies to employes who are affected by a collective bargaining agreement that
7 contains provisions inconsistent with that treatment on the day on which the
8 collective bargaining agreement expires or is extended, modified or renewed,
9 whichever occurs first.

10 (END)

(1)—Note)

State of Wisconsin

1997 - 1998 LEGISLATURE

LRB-4653/1 2

RAC:jlg:lp

Redraft under has been run

Seon

1997 BILL

Regen

1 AN ACT *to create* 40.41 (6) (g), subchapter X of chapter 40 [precedes 40.98] and
2 111.91 (2) (o) of the statutes; **relating to:** ~~eliminating~~ excluding from coverage under the
3 federal Social Security Act ~~for~~ services performed by part–time, seasonal and
4 temporary state employes, establishing an alternative plan with comparable
5 benefits to social security for these part–time, seasonal and temporary state
6 employes and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, all state employes are included for coverage under the federal Social Security Act. This bill ~~exempts~~ excludes from social security coverage those services performed by part–time, temporary and seasonal state employes, beginning on January 1, 1999, for all part–time, temporary and seasonal state employes who are not otherwise required to be covered under social security. The definitions of part–time, temporary and seasonal state employes are those provided in federal law. Part–time state employes are generally those employes who work 20 hours or less per week; seasonal state employes are generally those employes who work on a full–time basis less than 5 months in a year; and temporary state employes are generally those employes who perform services under a contractual arrangement with the state for a duration of 2 years or less.

In addition, under the bill, the department of employe trust funds (DETF) is required to establish an alternate plan for those part–time, temporary and seasonal

state employes that offers comparable benefits to those provided under social security. Coverage under this plan is mandatory for all part–time, temporary and seasonal state employes who are not otherwise required to be covered under social security. Under the plan, each employe is required to have 7.5% of his or her earnings deducted and contributed to the plan. There is no employer contribution.

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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 this bill.

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

1 **SECTION 1.** 40.41 (6) (g) of the statutes is created to read:

2 40.41 **(6)** (g) Services in state employment beginning on January 1, 1999, that
3 are performed by part–time, temporary and seasonal state employes who participate
4 in the alternative OASDHI plan established in subch. X.

5 **SECTION 2.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is
6 created to read:

7 **CHAPTER 40**

8 SUBCHAPTER X

9 ALTERNATIVE OASDHI PLAN FOR

1 PART–TIME, TEMPORARY AND SEASONAL
2 STATE EMPLOYES

3 **40.98 Alternative OASDHI plan for part–time, temporary and seasonal**
4 **state employes. (1)** In this subchapter:

5 (a) "Covered employe" means any part–time, temporary or seasonal state
6 employe who is not required by federal law to be covered under OASDHI.

7 (b) "Part–time state employe" means a state employe who is a part–time
8 employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (A).

9 (c) "Plan" means the alternative OASDHI plan established under sub. (2).

10 (d) "Seasonal state employe" means a state employe who is a seasonal employe
11 under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (B).

12 (e) "Temporary state employe" means a state employe who is a temporary
13 employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (C).

14 **(2)** The department shall establish by rule an alternative OASDHI plan for
15 covered employes. The plan shall comply with all applicable requirements of section
16 3121 of the Internal Revenue Code relating to plans for state employes that may be
17 alternatives to OASDHI. Participation in the plan by all covered employes shall be
18 mandatory. The plan shall provide comparable benefits to those provided under
19 OASDHI. The department shall provide coverage under the plan to all covered
20 employes beginning on January 1, 1999.

21 **(3)** Contributions under the plan shall be 7.5% of each payment of earnings of
22 the covered employe and shall be paid by the covered employe. The department may
23 increase or decrease the contribution rate by rule, but any such increase or decrease
24 shall be subject to any applicable requirement of section 3121 of the Internal

1 Revenue Code relating to plans for state employes that may be alternatives to
2 OASDHI.
3 **(4)** The department shall contract with an individual or organization in the
4 private sector for all administrative and investment services required under the
5 plan.
6 **(5)** Any contract entered into by the department under sub. (4) shall do all of
7 the following:
8 (a) Provide that the individual or organization reimburse the department, to
9 be credited to the administrative account of the public employe trust fund in s. 40.04
10 (2), for any costs incurred directly or indirectly by the department in implementing,
11 administering and monitoring the plan.
12 (b) Indemnify the state and all state employes against all costs, liabilities and
13 expenses that may result if the individual or organization under contract violates
14 any applicable provision of the Internal Revenue Code or the federal Social Security
15 Act.
16 **(6)** Subject to all applicable requirements of section 3121 of the Internal
17 Revenue Code relating to plans for state employes that may be alternatives to
18 OASDHI, all funds in the plan may be invested and reinvested in the same manner
19 provided for investments under s. 881.01 (1).
20 **SECTION 3.** 111.91 (2) (o) of the statutes is created to read:
21 111.91 (2) (o) Exclusion from social security coverage under s. 40.41 (6) (g) and
22 participation in the plan under subch. X of ch. 40.
23 **SECTION 4. Nonstatutory provisions.**
24 (1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The
25 department of employe trust funds shall submit in proposed form the rules required

1 under section 40.98 (2) of the statutes, as created by this act, to the legislative council
2 staff under section 227.15 (1) of the statutes no later than September 1, 1998.

3 **SECTION 5. Initial applicability.**

4 (1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT
5 LABOR RELATIONS ACT. The treatment of section 111.91 (2) (o) of the statutes first
6 applies to employes who are affected by a collective bargaining agreement that
7 contains provisions inconsistent with that treatment on the day on which the
8 collective bargaining agreement expires or is extended, modified or renewed,
9 whichever occurs first.

10 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/2dn
RAC:jlg:lp

Representative Plale:

I have prepared this draft in response to the Ronald Murphy's memorandum, a copy of which I received from your office. Mr. Murphy wishes for me to substitute the word "Exemption" for the word "Exclusion" in proposed s. 111.91 (2) (o), which establishes a prohibited subject of collective bargaining under the state employment labor relations act. I used the word "Exclusion" in the earlier draft because that is the proper legal term in Wisconsin. In Wisconsin, eligibility for coverage under the federal social security act is contained in subchapter III of chapter 40. Generally, all employes of participating employers in the Wisconsin retirement system (virtually all public employers) are included for coverage under the federal social security act, except as provided in s. 40.41 (6). The introductory clause of that current law subsection reads as follows:

"The following services shall be ***excluded*** from OASDHI coverage, and subsequent modifications of the state–federal agreements shall continue to provide for their ***exclusion***:" (emphasis added).

At no place in subchapter III is the word "exemption" used or a form of the word "exemption"; instead, the proper legal terms in Wisconsin with respect to coverage under the federal social security act are "inclusion" and "exclusion". For this reason, I must retain the word "Exclusion" in proposed s. 111.91 (2) (o), which cross references proposed s. 40.41 (6) (g), in order to effectuate the intent of your request.

For the purpose of consistency, however, I have redrafted the relating clause and the analysis to refer to "exclusion" or a form of the word "exclusion". My original relating clause and analysis were inconsistent on this point, using interchangeably the concepts of elimination, exclusion and exemption. In this way, the relating clause and the analysis will simply reflect the exclusion from social security coverage of services performed by part–time, temporary and seasonal state employes.

If you have any questions about this draft, please do not hesitate to contact me.

Richard A. Champagne
Legislative Attorney
266–9930

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/2dn
RAC:jlg:km

Monday, February 16, 1998

Representative Plale:

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If you have any questions about this draft, please do not hesitate to contact me.

Richard A. Champagne
Legislative Attorney
266–9930

Jeff Plale
State Representative
21st Assembly District

MEMORANDUM

TO: Richard Champagne, Assistant Chief Counsel
Legislative Reference Bureau- Drafting

FROM: Representative Jeff Plale

DATE: February 25, 1998

RE: LRB 4653/2—Excluding part-time seasonal and temporary employees from coverage under the federal Social Security Act.

Outlined below are two additional changes I would like to make to LRB 4653/2.

- Enrollment in an alternative plan for a part-time, temporary, or seasonal state employee is mandatory, unless the employee chooses to enter (or perhaps the term re-enter is more appropriate) the Social Security system. The employee would have only 30 days from employment in which to enter into the Social Security system.

- In the first month of each biennium, a part-time, temporary, or seasonal state employee would have a one month period to either remain in the alternative plan or elect to return to the Social Security system.

If you have any questions or comments please feel free to contact me at 6-0610. Thank you in advance for your assistance in this matter.

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P.O. Box 8953
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(608) 266-0610
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HOME
1404 Eighteenth Avenue
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(414) 571-0035

State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4653/2 3
RAC:jlg:km

Redraft notes has been run

1997 BILL

Regen

1 AN ACT *to create* 40.41 (6) (g), subchapter X of chapter 40 [precedes 40.98] and
2 111.91 (2) (o) of the statutes; **relating to:** excluding from coverage under the
3 federal Social Security Act services performed by part-time, seasonal and
4 temporary state employes, establishing an alternative plan with comparable
5 benefits to social security for these part-time, seasonal and temporary state
6 employes and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, all state employes are included for coverage under the federal Social Security Act. This bill excludes from social security coverage those services performed by part-time, temporary and seasonal state employes, beginning on January 1, 1999, for all part-time, temporary and seasonal state employes who are not otherwise required to be covered under social security. The definitions of part-time, temporary and seasonal state employes are those provided in federal law. Part-time state employes are generally those employes who work 20 hours or less per week; seasonal state employes are generally those employes who work on a full-time basis less than 5 months in a year; and temporary state employes are generally those employes who perform services under a contractual arrangement with the state for a duration of 2 years or less.

In addition, under the bill, the department of employe trust funds (DETF) is required to establish an alternate plan for those part-time, temporary and seasonal

state employes that offers comparable benefits to those provided under social security. ~~Coverage under this plan is mandatory for all part–time, temporary and seasonal state employes who are not otherwise required to be covered under social security.~~ Under the plan, each employe is required to have 7.5% of his or her earnings deducted and contributed to the plan. There is no employer contribution.

Insert Analysis

Under the plan, DETF is required to contract with an individual or organization in the private sector for all administrative and investment services required for the plan. The contract must require the individual or organization to reimburse DETF for all costs incurred directly or indirectly by DETF in implementing, administering and monitoring the plan and must require that the individual or organization indemnify the state and all state employes against all costs, liabilities and expenses that may result if the individual or organization violates any applicable provision of the Internal Revenue Code or the federal Social Security Act.

Finally, the bill provides that exclusion from social security coverage of services performed by these part–time, temporary and seasonal state employes and participation in the alternate plan by these employes are prohibited subjects of collective bargaining under the state employment labor relations act.

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 this bill.

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

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

1 **SECTION 1.** 40.41 (6) (g) of the statutes is created to read:

2 40.41 **(6)** (g) Services in state employment beginning on January 1, 1999, that
3 are performed by part–time, temporary and seasonal state employes who participate
4 in the alternative OASDHI plan established in subch. X.

5 **SECTION 2.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is
6 created to read:

7 **CHAPTER 40**

8 SUBCHAPTER X

9 ALTERNATIVE OASDHI PLAN FOR

PART–TIME, TEMPORARY AND SEASONAL STATE EMPLOYES

40.98 Alternative OASDHI plan for part–time, temporary and seasonal state employes. (1) In this subchapter:

(a) "Covered employe" means any part–time, temporary or seasonal state employe who is not required by federal law to be covered under OASDHI.

(b) "Part–time state employe" means a state employe who is a part–time employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (A).

(c) "Plan" means the alternative OASDHI plan established under sub. (2).

(d) "Seasonal state employe" means a state employe who is a seasonal employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (B).

(e) "Temporary state employe" means a state employe who is a temporary employe under 26 CFR 31.3121 (b) (7)–2 (d) (2) (iii) (C).

(2) The department shall establish by rule an alternative OASDHI plan for covered employes. The plan shall comply with all applicable requirements of section 3121 of the Internal Revenue Code relating to plans for state employes that may be alternatives to OASDHI. ~~Participation in the plan by all covered employes shall be mandatory.~~ The plan shall provide comparable benefits to those provided under OASDHI. The department shall provide coverage under the plan to all covered employes beginning on January 1, 1999.

(3) Contributions under the plan shall be 7.5% of each payment of earnings of the covered employe and shall be paid by the covered employe. The department may increase or decrease the contribution rate by rule, but any such increase or decrease shall be subject to any applicable requirement of section 3121 of the Internal

1 Revenue Code relating to plans for state employes that may be alternatives to
2 OASDHI.

3 **(4)** The department shall contract with an individual or organization in the
4 private sector for all administrative and investment services required under the
5 plan.

6 **(5)** Any contract entered into by the department under sub. (4) shall do all of
7 the following:

8 (a) Provide that the individual or organization reimburse the department, to
9 be credited to the administrative account of the public employe trust fund in s. 40.04
10 (2), for any costs incurred directly or indirectly by the department in implementing,
11 administering and monitoring the plan.

12 (b) Indemnify the state and all state employes against all costs, liabilities and
13 expenses that may result if the individual or organization under contract violates
14 any applicable provision of the Internal Revenue Code or the federal Social Security
15 Act.

16 **(6)** Subject to all applicable requirements of section 3121 of the Internal
17 Revenue Code relating to plans for state employes that may be alternatives to
18 OASDHI, all funds in the plan may be invested and reinvested in the same manner
19 provided for investments under s. 881.01 (1).

20 **SECTION 3.** 111.91 (2) (o) of the statutes is created to read:

21 111.91 **(2)** (o) Exclusion from social security coverage under s. 40.41 (6) (g) and
22 participation in the plan under subch. X of ch. 40.

23 **SECTION 4. Nonstatutory provisions.**

24 (1) SUBMISSION OF PROPOSED RULES TO THE LEGISLATIVE COUNCIL STAFF. The
25 department of employe trust funds shall submit in proposed form the rules required

1 under section 40.98 (2) of the statutes, as created by this act, to the legislative council
2 staff under section 227.15 (1) of the statutes no later than September 1, 1998.

3 **SECTION 5. Initial applicability.**

4 (1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING UNDER STATE EMPLOYMENT
5 LABOR RELATIONS ACT. The treatment of section 111.91 (2) (o) of the statutes first
6 applies to employes who are affected by a collective bargaining agreement that
7 contains provisions inconsistent with that treatment on the day on which the
8 collective bargaining agreement expires or is extended, modified or renewed,
9 whichever occurs first.

10 (END)

1997–1998 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4653/3ins
RAC:jlg:km

federal

Insert Analysis:

2

NO ¶ Participation in the plan by all part–time, temporary and seasonal state employes is mandatory, except that these employes may elect coverage under OASDHI during one of two periods: either no later than 30 days after the employe's initial date of employment with the state or during January of the odd–numbered year. Any part–time, temporary or seasonal state employe who elects coverage under OASDHI may not participate in the plan.

Social security Act

j

semicolo

Insert 3–21:

(2m) (a) Participation in the plan by all covered employes shall be mandatory, except that covered employes may elect coverage under OASDHI during one of the following periods:

1. No later than 30 days after the covered employe's initial date of employment with the state.

2. During January of the odd–numbered year.

(b) A covered employe may only elect coverage under OASDHI by notifying the department on a form provided by the department.

(c) A covered employe who elects coverage under OASDHI may not participate in the plan.

SUBMITTAL FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 2/26/98

To: Representative Plale

Relating to LRB drafting number: LRB-4653

Topic
private retirement plan for certain state employes

Subject(s)
Employ Pub - employe benefits, Employ Pub - retirement

1. **JACKET** the draft for introduction _____

   in the **Senate** ____ or the **Assembly** X (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

   A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

   If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Richard A. Champagne, Legislative Attorney
Telephone: (608) 266-9930

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION (608) 266-3561
REFERENCE SECTION (608) 266-0341
FAX (608) 266-5648

STEPHEN R MILLER
CHIEF

May 24, 1999

LRB
2

MEMORANDUM

To: Representative Plale

From: Richard A. Champagne, Legislative Attorney, (608) 266–9930

Subject: Technical Memorandum to **1999 AB 309**, (LRB 99–1713/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

TECHNICAL MEMO

DATE: May 19, 1999

SUBJECT: Technical Issues Concerning AB 309 (LRB-1713/1)

Background on the State of Wisconsin's Section 218 Agreement

The State of Wisconsin has a contract (referred to as a Section 218 Agreement) with the Social Security Administration (SSA) that defines positions covered under Social Security. The Department of Employe Trust Funds (DETF) has been charged with the responsibility of ensuring compliance with the Section 218 Agreement.

Wisconsin's Section 218 Agreement currently covers more than 2500 Wisconsin public employers (referred to as Covered Groups), including the State of Wisconsin. The Section 218 Agreement provides "absolute" Social Security coverage for covered positions within the Covered Groups. Absolute coverage means the positions must receive full Social Security coverage.

Since April 1, 1983, any public employer that entered into a Section 218 Agreement must continue under Social Security even if another qualifying retirement plan becomes available (unless the entity is legally dissolved).

In 1991, Congress passed the Omnibus Budget Reconciliation Act (OBRA) of 1990 which "mandated" Social Security coverage for most public employes not covered under a Section 218 Agreement or not covered under a qualified retirement system. It should be noted that, unlike Wisconsin, some States did not have qualified retirement systems or a Section 218 Agreement covering their employes. The purpose of this Act was to ensure these public employes had benefits available upon retirement.

Public employes covered by "mandatory" Social Security coverage as a result of the OBRA Act of 1990 may be excluded from Social Security coverage if the employer establishes a qualified retirement system for these employes. However, public employes covered by "absolute" Social Security coverage under a Section 218 Agreement may not be excluded from Social Security coverage, whether or not they are members of a qualified retirement system.

Technical Concerns with AB 309

1. There is no reference in the bill analysis or in the bill language to Wisconsin's Section 218 Agreement with the SSA. AB 309 appears to be in conflict with the provisions of the Section 218 Agreement. If the bill is passed as drafted, DETF may be unable to implement the legislation, as the State would be out of compliance with federal law; specifically the provisions of the Social Security Act as defined in Wisconsin's Section 218 Agreement.

The State cannot simply exclude State employes covered under the Section 218 Agreement from Social Security coverage by passing legislation. If the legislation impacts employes covered under the Section 218 Agreement, DETF must request, and the SSA must approve, modifications to the Section 218 Agreement.

2. There appears to be a misunderstanding relating to which State positions can be excluded from Social Security coverage by virtue of placing these positions under a qualified retirement system.

   As noted above, State positions covered under the Section 218 Agreement with the SSA have "absolute" coverage and these positions cannot be excluded from full Social Security coverage (whether or not there is a retirement system in place). Prior to April 20, 1983, public employers under a Section 218 Agreement could opt out of Social Security coverage. However, as provided in the *Federal-State Reference Guide For Social Security Coverage And FICA Reporting By State/Local Government Employers* (published in July, 1995), "since April 1, 1983, any public employer that entered into a Section 218 Agreement must continue under Social Security even if another qualifying retirement plan becomes available (unless the entity is legally dissolved)."

   Only positions with "mandatory" coverage under Social Security can be excluded upon enrollment in a qualified retirement system (other than the Wisconsin Retirement System as these members have "absolute" Social Security coverage under the Section 218 Agreement).

3. The language in AB 309 appears to suggest that Wisconsin has an exclusion from "absolute" Social Security coverage for part-time, seasonal and temporary State employes. Although the original Section 218 Agreement contained a general exclusion for employes working less than 600 hours in each year, this exclusion section has since been modified. Currently, there is a very limited exclusion for part-time positions. Section (B)(6) of Wisconsin's Section 218 Agreement, as amended by Modification No. 146, provides an exclusion for:

   > "Services performed by a student or member of a board or commission, except members of governing bodies, in a position or office which does not normally require actual performance of duty for at least 600 hours in each year."

   This exclusion for students and members of boards/commissions is the only exclusion for part-time positions within the State of Wisconsin. This part-time exclusion will most likely become even more restrictive on July 1, 2000 if the latest amendment (Modification No. 751, approved March 5, 1999) goes into effect. Modification 751 removes the words "student or" from the above definition and is contingent on the enactment of state legislation (see 1999 SB 141 or 1999 AB 322).

NOTE: Modification 751 is the result of Public Law 105-177 passed by Congress in October 1998. Section 2023 of Public Law 105-177 provided a window of opportunity for states to modify their 218 Agreements to exclude students who work for the institutions at which they attend classes.

There are positions that are excluded from Social Security coverage by federal law and these are defined in the Section 218 Agreement as:

- Service performed by an employe who is employed to relieve him from unemployment.
- Service performed in a hospital, home or other institution by an inmate.
- Covered transportation service as defined in Section 210 (k)(1) of the Social Security Act.
- Service (other than agricultural labor or student service) excluded from the definition of employment in Section 210 (a) of the Social Security Act, other than paragraph (8) of the section (i.e., domestic work in fraternity by a student, etc.).
- Services performed by an individual as an employe serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency.
- Services performed by election officials/workers paid less than $1000.00 in a calendar year.

DETF has verified with the SSA's Baltimore Legal Office that part-time (including seasonal and temporary) employes working for the State of Wisconsin have "absolute" coverage under the Section 218 Agreement. In a letter dated April 30, 1999, Judy Sobus, SSA Division of Coverage and Support, states:

> "It appears from Modification 146, that all part-time positions, with certain exceptions stated in Mod 146, are covered under the Agreement as an *absolute* coverage group, effective 7/1/57."

NOTE: The "certain exceptions" refers to the current exclusion for students and members of boards/commissions working less than 600 hours in each year.

4. There appears to be an assumption made in drafting this legislation that the SSA will allow a modification to Wisconsin's 218 Agreement to exclude additional positions from coverage under Social Security.

In a letter dated November 18, 1998, DETF asked the SSA's Baltimore Legal Office if the SSA would allow Wisconsin to modify section (B)(6) of the Section 218 Agreement to redefine the definition of "part-time." The SSA responded with a letter dated November 25, 1998, from Hugh Meade, Director of the Division of Coverage and Support, which indicated:

> "If the State's re-definition would broaden the scope of the exclusion previously taken (i.e., permit more individuals to be excluded from Social Security coverage), the application of such a definition would *not* be permissible."

5. The federal definitions of part-time, seasonal and temporary employes used in AB 309 are in conflict with the definition of part-time employes for purposes of Social Security coverage under Wisconsin's Section 218 Agreement. As noted in #4 above, the SSA has made it clear that they will not allow an amended definition of part-time which has the result of expanding the exclusion for Social Security coverage.

6. There are many WRS participants who can be classified as part-time, seasonal and/or temporary under the federal definitions in AB 309. According to preliminary statistics from ETF's WRS participant database, there are approximately 5100 active WRS participants who meet the federal definition of part-time (i.e., working 20 or less hours per week). These employes may be limited-term, permanent part-time and/or seasonal. However, all these employes have absolute Social Security coverage under the Section 218 Agreement.

   Department of Administration Central Payroll staff report that on October 10, 1998, there were 6,528 limited-term employes (this does not include permanent part-time employes) working for State agencies and the UW. Of this number, 2,817 (43%) were eligible and participating in the WRS.

In summary, there appear to be major technical problems with this proposed legislation as well as significant conflicts with Wisconsin's contract with the Social Security Administration that defines which State positions are covered by Social Security with "absolute" coverage.

If you need further information on the technical memo, please contact Jean Gilding, Administrator, Division of Employer Services, Department of Employe Trust Funds at 266-1210.