

1999 DRAFTING REQUEST

Bill

Received: 03/1/99

Received By: champra

Wanted: As time permits

Identical to LRB:

For: Stephen Freese (608) 266-7502

By/Representing: Terry

This file may be shown to any legislator: NO

Drafter: champra

May Contact:

Alt. Drafters:

Subject: Employ Pub - retirement

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Retirement benefits under the Wisconsin retirement system

Instructions:

Redraft 1997 AB 421; OK to incorporate technical changes.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	champra 03/1/99	gilfokm 03/1/99		_____			S&L Retire
/1			jfrantze 03/2/99	_____	lrb_docadmin 03/2/99	lrb_docadmin 03/12/99	
				_____		<del>lrb_docadmin</del> <del>03/12/99</del>	

FE Sent For:

05-06-99

<END>

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/?	champra	✓ 3-1-99 KG	3/2	26/ch 3/2			

FE Sent For:

<END>

D-Note

1999 - 2000 LEGISLATURE

TUES ~~WED~~

1999 BILL

LRB-1748/1

RAC:pgt&jlg:ijs

LRB-2366/1

RAC:1:

↑  
stays

1 **AN ACT to amend** 40.23 (2m) (e) 1., 40.23 (2m) (e) 2., 40.23 (2m) (e) 3. and 40.23  
2 (2m) (e) 4. of the statutes; **relating to:** making an accelerated distribution from  
3 the transaction amortization account of the fixed retirement investment trust  
4 of the employe trust fund and increasing the retirement formula multiplier for  
5 participating employes in the Wisconsin retirement system.

---

***Analysis by the Legislative Reference Bureau***

Under current law, when a participant in the Wisconsin retirement system (WRS) terminates covered employment and becomes eligible for a retirement annuity, one of the ways in which the amount of his or her annuity is determined is by multiplying the participant's final average earnings by the participant's years of creditable service and by a percentage multiplier. For a protective occupation participant who is covered by social security, an elected official and an executive participating employe, the percentage multiplier is 2%. For a protective occupation participant who is not covered by social security, the percentage multiplier is 2.5%. For all other participants in the WRS, the percentage multiplier is 1.6%.

This bill increases the percentage multiplier for all classes of participants in the WRS for creditable service that is earned before January 1, 2000. For a protective occupation participant who is covered by social security, an elected official and an executive participating employe, the percentage multiplier is increased to 2.2%. For a protective occupation participant who is not covered by social security, the percentage multiplier is increased to 2.7%. For all other participants in the WRS,

**BILL**

the percentage multiplier is increased to 1.8%. The increase in the percentage multiplier first applies to the calculation of retirement benefits for individuals who are participating employees in the WRS on January 1, 2000, or on the effective date of the bill, whichever is later. For all creditable service that is earned on or after January 1, 2000, however, the bill provides that the current law percentage multipliers will apply.

Under current law, a fixed retirement investment trust (FRIT) and a variable retirement investment trust are maintained within the public employe trust fund under the management of the investment board. Within the FRIT, a transaction amortization account (TAA) is maintained that is used for the purpose of smoothing out fluctuations in unrecognized gains and losses in the value of FRIT assets. The balance of the TAA closely parallels the difference between market value and the adjusted book value of the assets. Annually, 20% of the balance of the TAA is distributed to the fixed annuity reserve, the fixed employer accumulation reserve and the fixed employe accumulation reserve.

This bill provides that on January 1, 2000, or on the effective date of this bill, whichever is later, \$2,100,000,000 is to be distributed from the TAA to the fixed annuity reserve, the fixed employer accumulation reserve and the fixed employe accumulation reserve in an amount equal to a percentage of the total distribution determined by dividing each reserve's balance on the prior January 1 by the total balance of the fixed retirement investment trust on the prior January 1. Under the bill, the increase in the fixed employer accumulation reserve that results from the distribution shall, on the recommendation of the actuary, be first applied to funding any liabilities created by the bill.

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 and local* 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.** 40.23 (2m) (e) 1. of the statutes is amended to read:
- 2           40.23 **(2m)** (e) 1. For each participant for creditable service of a type not
- 3 otherwise specified in this paragraph that is credited before January 1, 2000, 1.8%;
- 4 for such creditable service that is credited on or after January 1, 2000, 1.6%.
- 5           **SECTION 2.** 40.23 (2m) (e) 2. of the statutes is amended to read:

**BILL**

1           40.23 (2m) (e) 2. For each participant for creditable service as an elected official  
2           or as an executive participating employe that is credited before January 1, 2000,  
3           2.2%; for such creditable service that is credited on or after January 1, 2000, 2%.

4           **SECTION 3.** 40.23 (2m) (e) 3. of the statutes is amended to read:

5           40.23 (2m) (e) 3. For each participant subject to titles II and XVIII of the federal  
6           social security act, for service as a protective occupation participant that is credited  
7           before January 1, 2000, 2.2%; for such creditable service that is credited on or after  
8           January 1, 2000, 2%.

9           **SECTION 4.** 40.23 (2m) (e) 4. of the statutes is amended to read:

10          40.23 (2m) (e) 4. For each participant not subject to titles II and XVIII of the  
11          federal social security act, for service as a protective occupation participant that is  
12          credited before January 1, 2000, 2.7%; for such creditable service that is credited on  
13          or after January 1, 2000, 2.5%.

14          **SECTION 5. Nonstatutory provisions.**

15          (1) TRANSFER OF FUNDS FROM THE TRANSACTION AMORTIZATION ACCOUNT OF THE  
16          FIXED RETIREMENT INVESTMENT TRUST.

17          (a) On the effective date of this paragraph, \$2,100,000,000 shall be distributed  
18          from the transaction amortization account of the fixed retirement investment trust  
19          to the employe accumulation, employer accumulation and annuity reserves of the  
20          fixed retirement investment trust in an amount equal to a percentage of the total  
21          distribution determined by dividing each reserve's balance on the prior January 1 by  
22          the total balance of the fixed retirement investment trust on the prior January 1.

23          (b) The increase in the employer accumulation reserve that results from the  
24          distribution under paragraph (a) shall, on the recommendation of the actuary, be

**BILL**

1 applied to funding any liabilities created by the treatment of section 40.23 (2m) (e)  
2 1., 2., 3. and 4. of the statutes in this act.

3 (c) The total amount distributed to the employe accumulation reserve under  
4 paragraph (a) shall be equitably credited to participants' accounts based on their  
5 account balances as of January 1, 2000, pursuant to section 40.04 (4) (a) 2. of the  
6 statutes.

7 (d) The total amount distributed to the annuity reserve under paragraph (a)  
8 shall be distributed as provided under section 40.27 (2) of the statutes.

9 (2) ADMINISTRATION OF BENEFIT IMPROVEMENTS. No later than the first day of the  
10 6th month beginning after the effective date of this subsection, the department of  
11 employe trust funds shall do all of the following:

12 (a) Implement the changes required by the amendments to section 40.23 (2m)  
13 (e) 1., 2., 3. and 4. of the statutes in this act.

14 (b) If necessary, adjust the benefits paid to any participant in the Wisconsin  
15 retirement system who terminated covered employment between the effective date  
16 of this subsection and the first day of the 6th month beginning after the effective date  
17 of this paragraph.

**SECTION 6. Initial applicability.**

18 (1) The treatment of section 40.23 (2m) (e) 1., 2., 3. and 4. of the statutes first  
19 applies to the calculation of retirement benefits for individuals who are participating  
20 employes in the Wisconsin retirement system on January 1, 2000, or on the effective  
21 date of this subsection, whichever is later.  
22

23 (END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1748/1dn  
RAC:pgt&jlgjjs

February 10, 1999

LRB-2366/1dn  
RAC: ↑:

→ ~~XXXXXXXXXX~~  
This draft changes 1997 AB-421 in the following ways:

1. I did not include the amendment to s. 40.02 (7), because this change has been accomplished by the employe trust funds board reducing the assumed rate for 1998. You may wish to speak with DETF about the magnitude of this reduction.

2. In s. 40.23 (2m) (e) 1. to 4., I changed the word "earned" to the word "credited". This change will make it easier for DETF to determine which creditable service is to be given the higher multiplier.

→ 3. I specified that the transfer is to take place on January 1, 2000, or on the effective date of the bill, whichever is later. In 1997 AB-421, the effective date was January 1, 1998, or the effective date of this bill, whichever is later. *Per your instructions, Is this OK?*

4. I deleted language that appears on page 4, lines 22 to 25, of 1997 AB-421. This language is not necessary, because the balance will be allocated in this manner.

5. I provided that the crediting of participants' accounts will be equitably credited based on their account balances as of January 1, 2000. After further review, I believe that the original language in 1997 AB-421, if enacted, could result in an unconstitutional impairment of contract, because ch. 40 does not allow for such a restriction on crediting participants' accounts.

6. The new language in the nonstatutory section will assist DETF in implementing the retirement benefit improvements.

7. I clarified the initial applicability language to make it clear that the multiplier increase *first* applies to the calculation of retirement benefits of individuals who are participating employes in the WRS on the effective date of the bill. Participants who have terminated covered WRS employment before the effective date of the bill will not receive the increase.

In reviewing this draft, you may wish to note that this draft requires an accelerated distribution in the amount of \$2.1 billion from the transaction amortization account (TAA). This is a considerable transfer of funds that is not currently provided for in law under ch. 40, which requires that only 20% of the balance of the TAA be distributed each year. While there is no case law on point dealing solely with the legality of an accelerated TAA transfer, there is relevant case law that prohibits the legislature from



affecting “the actuarial soundness” of a retirement plan. *Ass’n of State Prosecutors v. Milwaukee County*, 199 Wis. 2d 549, 562 (1996). For that reason, if the “actuarial soundness” of the Wisconsin retirement system is affected by this TAA accelerated transfer, a court could find the transfer illegal.

Also, you should note that there are equity issues involved in a TAA transfer that could amount to a constitutional violation. Under current law, the accounts of all participants in the WRS are not treated the same. Participants who began covered employment before 1982 have their accounts in the fixed annuity division credited annually with the actual interest rate, while participants who began covered employment after 1981 have their accounts in the fixed annuity division credited annually with a 5% interest rate. By providing for an accelerated distribution from the TAA, participants who began covered employment after 1981 will not have any of these transferred moneys credited directly to their accounts, while participants who began covered employment before 1982 will have these moneys flow to their accounts in the form of increased interest crediting. The problem is that had these moneys remained in the TAA, those participants who began covered employment after 1981 could have been eligible to receive some of these moneys upon retirement. As annuitants under the WRS, they would be eligible to have TAA distributions actually credited to their accounts. But because of this accelerated distribution, these moneys are no longer in the TAA.

If ch. 40 is viewed as a contract between the state and the participants, in which a participant may expect that 20% of the TAA will be distributed annually, then an accelerated distribution from the TAA that is greater than 20% and that results in some participants being unable to receive at the time of retirement moneys that they otherwise would have been eligible to receive may result in an impairment of contract. Such an impairment of contract could result in a taking of property without just compensation, in violation of article I, section 13, of the Wisconsin Constitution.

Having raised these issues, I must also point out for your information that there have been accelerated distributions from the TAA in the past and none of the distributions have been found by a court to be unconstitutional. Even in *Retired Teachers Ass’n v. Employe Trust Funds Bd.*, 207 Wis. 2d 1 (1997), the Wisconsin Supreme Court did not hold that the TAA accelerated distribution in itself was unconstitutional, but instead the Court found that the legislature’s directing the use of the funds from the accelerated distribution to pay for the Special Investment Performance Dividend for certain WRS annuitants was unconstitutional.

I hope this information is useful. If I can be of any further assistance in this matter, please contact me.

Richard A. Champagne  
Legislative Attorney  
Phone: (608) 266-9930  
E-mail: Rick.Champagne@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2366/1dn  
RAC:pgt&jlg:jf

March 2, 1999

This draft changes 1997 AB-421 in the following ways:

1. I did not include the amendment to s. 40.02 (7), because this change has been accomplished by the employe trust funds board reducing the assumed rate for 1998. You may wish to speak with DETF about the magnitude of this reduction.

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In reviewing this draft, you may wish to note that this draft requires an accelerated distribution in the amount of \$2.1 billion from the transaction amortization account (TAA). This is a considerable transfer of funds that is not currently provided for in law under ch. 40, which requires that only 20% of the balance of the TAA be distributed each year. While there is no case law on point dealing solely with the legality of an accelerated TAA transfer, there is relevant case law that prohibits the legislature from affecting "the actuarial soundness" of a retirement plan. *Ass'n of State Prosecutors v.*

*Milwaukee County*, 199 Wis. 2d 549, 562 (1996). For that reason, if the “actuarial soundness” of the Wisconsin retirement system is affected by this TAA accelerated transfer, a court could find the transfer illegal.

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I hope this information is useful. If I can be of any further assistance in this matter, please contact me.

Richard A. Champagne  
Legislative Attorney  
Phone: (608) 266-9930  
E-mail: sRick.Champagne@legis.state.wi.us

10

**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:** 3/2/99

**To:** Representative Freese

**Relating to LRB drafting number:** LRB-2366

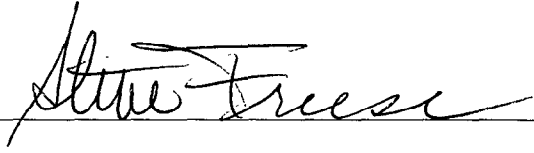
**Topic**

Retirement benefits under the Wisconsin retirement system

**Subject(s)**

Employ Pub - retirement

1. **JACKET** the draft for introduction



in the **Senate** \_\_\_\_\_ or the **Assembly**  (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

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Thursday, April 08, 1999 10:45 AM  
**To:** Griffiths, Terri  
**Subject:** LRB 99-2366/1 (per your request)

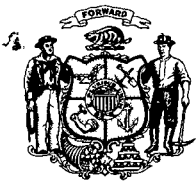


99-2366/1

*Mike Barman*

Mike Barman - Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703



# 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

LRB  
/

May 19, 1999

## MEMORANDUM

**To:** Representative Freese

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

**Subject:** Technical Memorandum to **1999 AB 323** (LRB.99-2366/1)

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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.

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4  
5  
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## TECHNICAL MEMO

**DATE:** April 23, 1999

**SUBJECT:** Technical Issues Concerning AB 323 (LRB 2366/1)

- Please observe that if funding of the benefit improvement created in this bill is inadequate for any reason, contribution rate increases to employees and employers will result in the future. This would prove problematic since employees hired after the effective date of the bill would not receive any benefit increase, but would share in paying the cost. A possible remedy to this situation is to require any cost increases due to the bill in future contribution rates to be applied to the employer contribution rate only.
- AB 323 refers throughout the bill to applying the higher formula factor to creditable service that is "credited before January 1, 2000." The term "credited" needs to be clarified or amended to specify to which service the higher formula factor would be applied in the following circumstances:

1. **Service purchases.** Since purchased creditable service (forfeited, qualifying, other government, etc.) cannot be credited before the Department of Employee Trust Funds receives the application and payment, under the current language in AB 323 the higher formula factor could not apply to service purchased after January 1, 2000. There would be a tremendous demand for service purchase estimates and applications so participating employees could purchase any eligible service before the effective date of the benefit improvement. However, the cost of covering this service could not be estimated by the actuary since it is not known how much service would be purchased (and therefore credited) before the effective date of the bill. There would be a large additional cost since the amounts paid by participants to purchase service are subsidized by all employees and employers in the contribution rates.

One option is simply to not permit service purchases before or after the effective date of the bill to be credited at the higher formula multiplier.

An alternative approach might be to amend AB 323 to refer to service "earned" before January 1, 2000, and treat purchased service originally served before the year 2000 as service earned before that date, regardless of when it is purchased.

Under either approach there would be significant administrative costs associated with tracking when service was earned versus when it was credited.

2. **Retroactive corrections.** If retroactive corrections are made to a participant's creditable service after January 1, 2000 for service originally earned before that date (e.g. adding creditable service to the participant's account under the Benson court decision), would the higher formula factor apply to the service retroactively credited to the participant's account? If not, the participant's benefit amount would be dependent on the Department's timing in making the correction, the employer's timing in submitting corrected reports to the Department, and/or the timing of resolving appeals related to creditable service earned before January 1, 2000.

1. 2. 3. 4. 5.

6. 7. 8. 9. 10.

Again, changing the word "credited" to service "earned" before January 1, 2000 would clarify that retroactive service corrections made after that date would result in the higher formula factor being applied to the finalized pre-2000 service.

□ **Non-Statutory Provisions**

1. Section 5, sub. (1) Transaction Amortization Account (TAA) Transfer state that on the effective date of this paragraph \$2.1 billion shall be distributed from the TAA to the fixed retirement investment trust. The effective date of the distribution appears to be January 1, 2000 or later. It is strongly recommended that the TAA distribution occur on the December 31 prior to the effective date of the benefit improvements. This will prevent participating employees who are retiring with the higher formula from also getting a large post-retirement dividend in the following year. If the TAA transfer takes place in the same year as the effective date of the bill participating employees would receive the multiplier increase and a large post-retirement dividend in the following year because of the accelerated investment return to the annuity reserve in that year.

To avoid this unintended "double benefit" the TAA transfer should occur in the year prior to the effective date of the benefit improvement.

2. Section 5, sub. (2) Administration of Benefit Improvements states that by the first day of the 6<sup>th</sup> month beginning after the effective date of the legislation, the department shall do the following:
  - Par. (2) (a) states that the Department shall implement the changes in this bill, and
  - Par. (2) (b) states the Department shall, if necessary, adjust the benefits paid to any participant who terminated WRS employment between the effective date of the bill and the first day of the sixth month after the effective date of the bill.

Assuming the bill becomes effective January 1, 2000, the Department would have to be paying all benefits as calculated under AB 323 no later than July 1, 2000 for all participants with termination dates on or after January 1, 2000 through June 30, 2000. Since many of these annuitants may be receiving estimated payments (which may not have been calculated under the new law), this provision appears to require that the Department recalculate those benefits before July 1, even if the participant retired at the end of June. This will not be possible for participants retiring in June as they will not receive their first payment until August or September. Additionally, final reports on earnings and service from employers often are not received for several months making it impossible to finalize all benefits by July 1.

The bill could be amended to simply state that the Department may delay implementation of the provisions of the bill for up to six months to make the necessary administrative changes. There is no need to set a deadline for adjustment of benefits since that will occur in the normal course of finalizing a retirement benefit.

If you need further information on the technical memo, please contact Dave Stella, Administrator, Division of Retirement Services, Department of Employee Trust Funds at 267-9038.