DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2583/1dn
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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.

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.

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