

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3733/1dn
MES:jlj:jf

October 11, 1999

Senator Clausing:

I believe that this bill reflects your instructions, but you should be aware that the bill, if it is enacted, could be challenged as a violation of the Equal Protection clause of the U.S. Constitution. The bill treats retired public school teachers who worked in another state and lived in Wisconsin on December 31, 1963, differently from all other retirees who worked for public or private employers in another state and lived in Wisconsin on December 31, 1963. If this bill becomes law, it may be difficult for the state to demonstrate that it has a rational basis to discriminate on this basis.

Although the pension benefits of certain teachers and certain Milwaukee County and City of Milwaukee employees are exempt from taxation under current law, it is my understanding that these exemptions were created when several small local pension systems were consolidated into the Wisconsin retirement system. If the payments from the small pensions were already exempt from taxation under a contract, it would have been unconstitutional under article I, section 12, of the state constitution to change their tax-exempt status. Contractual rights in a municipal retirement system cannot be impaired by subsequent legislation. *State ex. rel. Bartelt v. Thompson* 246 Wis. 11, appeal dismissed 324 U.S. 828, 65 S. Ct. 868 (1944). It is also my understanding that the state may have been able to demonstrate a rational basis for consolidating the small pension systems which already exempted from taxation the pension benefits of their participants.

It is difficult to predict whether this bill would be challenged if it became law and what the result of such a challenge would be, but I thought you should at least be aware of the issue.

In addition, I added an additional "December 31, 1963" after "in another state" on page 2, and changed the initial applicability section to "taxable years beginning on January 1..." to address concerns raised by the department of revenue in its comments on 1997 SB-104.

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