

1999 DRAFTING REQUEST

Bill

Received: **12/13/1999**

Received By: **champra**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Gordon Anderson**

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:

Pre Topic:

No specific pre topic given

Topic:

Miscellaneous revision provisions affecting the department of employe trust funds

Instructions:

Compile LRB 99-2189, 2343, 2344, 2345, 2346 into one draft

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>
/P1	champra 12/14/1999	chanaman 12/15/1999		_____			State Retire
/P2			martykr 12/15/1999	_____	lrb_docadmin 12/15/1999		State Retire
/1	champra 01/05/2000	chanaman 01/06/2000	jfrantze 01/07/2000	_____	lrb_docadmin 01/07/2000		State Retire
/2	champra 01/11/2000	chanaman 01/11/2000	martykr 01/12/2000	_____	lrb_docadmin 01/12/2000	lrb_docadmin	State Retire

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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Km 1/11

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FE Sent For:			<i>12 15</i>				

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2189 / P /
2343 / P /
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Please
compile all
of these
into
-4068

Thurs

4068 /

Rick Chang

Sorted Item List

<u>Store File Name</u>	<u>Text</u>
-2189.1	40.02 (1) of the statutes is amended to read:
-2189.2	40.02 (2) of the statutes is amended to read:
-2346.1	40.02 (15) (c) 4. of the statutes is amended to read:
-2189.3	40.02 (38) of the statutes is amended to read:
-2189.4	40.02 (54v) of the statutes is created to read:
-2189.5	40.04 (4) (a) 1. of the statutes is amended to read:
-2189.6	40.04 (4) (a) 2. of the statutes is amended to read:
-2189.7	40.04 (7) (intro.) of the statutes is amended to read:
-2189.8	40.04 (7) (a) (intro.) of the statutes is amended to read:
-2189.9	40.04 (7) (c) of the statutes is amended to read:
-2189.10	40.05 (1) (a) 5m. of the statutes is created to read:
-2189.11	40.05 (1) (a) 7. of the statutes is amended to read:
-2343.1	40.05 (2) (g) 2. of the statutes is amended to read:
-2345.1	40.08 (4) of the statutes is repealed and recreated to read:
-2189.12	40.08 (7) (a) of the statutes is amended to read:
-2189.13	40.23 (1) (b) of the statutes is amended to read:
-2189.14	40.24 (1) (f) of the statutes is amended to read:
-2189.15	40.24 (3) of the statutes is amended to read:
-2189.16	40.24 (7) (a) 4. of the statutes is amended to read:
-2189.17	40.25 (1) (a) of the statutes is amended to read:
-2189.18	40.25 (1) (a) of the statutes is amended to read:
-2189.19	40.25 (1) (b) of the statutes is amended to read:
-2189.20	40.25 (3m) of the statutes is amended to read:
-2189.21	40.25 (4) of the statutes is amended to read:
-2344.1	40.25 (6) (a) 1. of the statutes is amended to read:
-2344.2	40.25 (6) (a) 2. of the statutes is amended to read:
-2344.3	40.25 (7) (a) 2. of the statutes is amended to read:
-2344.4	40.25 (7) (a) 3. of the statutes is amended to read:
-2189.22	40.26 (2) (a) of the statutes is amended to read:
-2189.23	40.26 (2) (b) of the statutes is amended to read:

-2189.24	40.28 (1) (a) 1. of the statutes is amended to read:
-2189.25	40.63 (9) (b) of the statutes is amended to read:
-2189.26	40.63 (10) of the statutes is amended to read:
-2189.27	40.73 (1) (b) of the statutes is amended to read:
-2343.2	40.80 (2) (g) of the statutes is created to read:
-2344.5	Initial applicability.

NOTES FOR LRB-2189/1:

1. On page 2, after line 5, insert "NOTE: The definition is amended to specify that it includes both after-tax additional contributions and tax-deferred (pre-tax) additional contributions."

2. On page 2, after line 9, insert "NOTE: The definition of "additional contribution" is amended to make the term refer only to an after-tax contribution. See also the new definition created by SECTION 4."

3. On page 2, after line 17, insert "NOTE: The new definition of "tax-deferred additional contribution" distinguishes these pre-tax contributions from additional (after-tax) contributions."

4. On page 2, after line 23, insert "NOTE: The definition of "immediate annuity" is amended to exclude both categories of "additional contributions."

5. On page 3, after line 5, insert "NOTE: SECTIONS 5 to 9 amend provisions relating to the accounting of contributions to create separate accounting for each category of additional contributions."

6. On page 5, after line 13, insert "NOTE: The amended provision clarifies that only participating employees of eligible employers may make tax-deferred additional contributions, and the responsibility for determining the amount of contributions that can be made is the responsibility of the employees and employers, not the Wisconsin Retirement System."

7. On page 5, after line 20, insert "NOTE: The amendment to this provision removes references relating to use of accumulated after-tax additional contributions to purchase creditable service. The amended provision refers to "additional contributions" which are defined as after-tax contributions."

8. On page 6, after line 6, insert "NOTE: This provision, relating to overpayments and underpayments, is amended to recognize that the provisions apply to both categories of additional contributions."

9. On page 6, after line 19, insert "NOTE: This provision is amended to clarify that the treatment of retirement annuities applies to both categories of additional contributions."

10. On page 7, after line 7, insert "NOTE: The changes made by SECTIONS 14 to 16 to provisions relating to annuity options, clarify that these provisions apply to both categories of additional contributions."

11. On page 9, after line 18, insert "NOTE: SECTIONS 17 to 20 amend provisions relating to lump sum payments to clarify that the provisions apply to both categories of additional contributions."

12. On page 10, after line 9, insert "NOTE: The change, relating to a provision on reentry into covered service, clarifies that it applies to both categories of additional contributions."

13. On page 10, after line 13, insert "NOTE: This change clarifies that the provision, relating to variable benefits, applies to both categories of additional contributions."

14. On page 11, after line 18, insert "NOTE: The change to this provision, relating to disability annuities, clarifies that it applies to both categories of additional contributions."

15. On page 12, after line 2, insert "NOTE: This provision, relating to death benefits, is amended to provide that it applies to both categories of additional contributions."

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

LRB-2189/P1dn
RAC:jlg:hmh

March 25, 1999

1. In s. 40.02 (2), I did not insert the reference to tax-deferred additional contributions, because these contributions are, by definition, not "after-tax" contributions. Is this OK?

2. Compare my treatments of ss. 40.02 (54v) and 40.05 (1) (a) 5m. to the proposed language submitted by DETF. Essentially, I drafted the limitations on who is eligible to make the tax-deferred additional contributions under s. 40.05 (1) (a) 5m. rather than under s. 40.02 (54v). I did this to avoid putting substantive program requirements in the definition section of ch. 40. Also, please make certain that I have accurately specified which employers are permitted to have their employees make the tax-deferred additional contributions. It was unclear in the proposed language under s. 40.02 (54v) if there is just one kind employer who is covered or if there are two kinds of employers who are covered.

3. Since I am amending s. 40.25 (1) (b), I also correct an anomaly in that paragraph and in s. 40.25 (1) (a). Is this OK?

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Changes Page 5, 7 & 8
+ renumber SEC 19 to 20
as 18 to 24.

1 **AN ACT to amend** 40.02 (1), 40.02 (2), 40.02 (38), 40.04 (4) (a) 1., 40.04 (4) (a) 2.,
2 40.04 (7) (intro.), 40.04 (7) (a) (intro.), 40.04 (7) (c), 40.05 (1) (a) 7., 40.08 (7) (a),
3 40.23 (1) (b), 40.24 (1) (f), 40.24 (3), 40.24 (7) (a) 4., 40.25 (1) (a), 40.25 (1) (a),
4 40.25 (1) (b), 40.25 (3m), 40.25 (4), 40.26 (2) (a), 40.26 (2) (b), 40.28 (1) (a) 1.,
5 40.63 (9) (b), 40.63 (10) and 40.73 (1) (b); and **to create** 40.02 (54v) and 40.05
6 (1) (a) 5m. of the statutes; **relating to:** the making of additional retirement
7 contributions by participants in the Wisconsin retirement system (suggested as
8 remedial legislation by the department of employe trust funds).

Analysis by the Legislative Reference Bureau

Current law permits the making of additional contributions by participants in the Wisconsin retirement system (WRS). These contributions are in addition to the employer and employe required contributions to the WRS. Additional contributions may be used to purchase an annuity at the time of retirement. This bill specifies that there are two different kinds of additional contributions that may be made by participating employes to the WRS: after-tax additional contributions made under section 401 (a) of the Internal Revenue Code (IRC); and tax-deferred additional contributions made under section 403 (b) of the IRC.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 40.02 (1) of the statutes is amended to read:

2 40.02 (1) "Accumulation" means the total employe required contributions ~~ex~~,
3 employer required contributions ~~ex~~, additional contributions or tax-deferred
4 additional contributions as increased or decreased by application of investment
5 earnings.

6 **SECTION 2.** 40.02 (2) of the statutes is amended to read:

7 40.02 (2) "Additional contribution" means any after-tax contribution made by
8 or on behalf of a participant to the retirement system other than employe and
9 employer required contributions.

10 **SECTION 3.** 40.02 (38) of the statutes is amended to read:

11 40.02 (38) "Immediate annuity" means an annuity, not including an annuity
12 from additional contributions or tax-deferred additional contributions, which begins
13 to accrue not later than 30 days after termination of employment.

14 **SECTION 4.** 40.02 (54v) of the statutes is created to read:

15 40.02 (54v) "Tax-deferred additional contribution" means any contribution
16 made to the retirement system by a participating employe as a pre-tax deduction
17 from earnings under section 403 (b) of the Internal Revenue Code.

18 **SECTION 5.** 40.04 (4) (a) 1. of the statutes is amended to read:

1 40.04 (4) (a) 1. Credited with all employe contributions made under s. 40.05 (1),
2 all employer additional contributions made under s. 40.05 (2) (g) 1., all additional
3 contributions under s. 40.05 (2) (g) 2., all tax-deferred additional contributions
4 under s. 40.05 (1) (a) 5m. and all contribution accumulations reestablished under s.
5 40.26 or 40.63 (10).

5 2 9
6 → **SECTION 6.** 40.04 (4) (a) 2. of the statutes is amended to read:

7 40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's
8 closing balance at the effective rate on all employe required contribution
9 accumulations in the variable annuity division, on all employe required
10 contributions in the fixed annuity division on December 31, 1984, on all employe
11 required contributions in the fixed annuity division of participants who are not
12 participating employes after December 31, 1984, and on all employe and employer
13 additional contribution accumulations and on all tax-deferred additional
14 contribution accumulations and with interest on the prior year's closing balance at
15 the assumed benefit rate on all employe required contribution accumulations in the
16 fixed annuity division for participants who are participating employes after
17 December 31, 1984.

18 **SECTION 7.** 40.04 (7) (intro.) of the statutes is amended to read:

19 40.04 (7) (intro.) The reserves established under subs. (4), (5) and (6) shall be
20 divided both individually and for the purposes of sub. (3) between a fixed annuity
21 division and a variable annuity division. All required ~~and~~, additional and
22 tax-deferred additional contributions shall be credited to the fixed annuity division
23 except:

24 **SECTION 8.** 40.04 (7) (a) (intro.) of the statutes is amended to read:

1 40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30,
2 1980. Any participant whose accounts on January 1, 1982, include credits
3 segregated for a variable annuity shall have his or her required ~~and~~, additional and
4 tax-deferred additional contributions made on or after January 1, 1982, credited to
5 the variable annuity division in a manner consistent with the participant's election
6 prior to April 30, 1980, unless prior to January 1, 1982, the participant terminated
7 such election under s. 40.85, 1979 stats. The department shall by rule provide that
8 any participant who elected variable participation prior to April 30, 1980, may elect
9 to cancel that variable participation as to future contributions. The department's
10 rules shall permit a participant who elects or has elected to cancel variable
11 participation as to future contributions, or an annuitant, to elect to transfer previous
12 variable contribution accumulations to the fixed annuity division. A transfer of
13 variable contribution accumulations under this paragraph shall result in the
14 participant receiving the accrued gain or loss from the participant's variable
15 participation. A participant may specify that election to cancel participation in the
16 variable annuity division is conditional. If the participant so specifies the election
17 is effective on the first date on which it may take effect on which the participant:

18 **SECTION 9.** 40.04 (7) (c) of the statutes is amended to read:

19 40.04 (7) (c) Any participant whose required contributions are segregated in
20 any portion to provide for a variable annuity may direct that any part or all of
21 subsequent additional and tax-deferred additional contributions credited to the
22 participant's account be segregated to provide for a variable annuity and may at any
23 time by filing a form prescribed by the department change the portion being
24 segregated for any future additional contributions.

25 **SECTION 10.** 40.05 (1) (a) 5m. of the statutes is created to read:

1 40.05 (1) (a) 5m. Tax-deferred additional contributions may be made by any
2 participating employe of ~~an employer covered under section 403(b) of the Internal~~
3 ~~Revenue Code~~ of an employer that had at least one employe who made such
4 contributions to the Wisconsin retirement system or its predecessor systems under
5 s. 42.30 (3), 1979 stats., on or before May 17, 1982. The making of contributions
6 under this subdivision shall be subject to any limitations imposed on contributions
7 by the Internal Revenue Code, applicable regulations adopted under the Internal
8 Revenue Code and rules of the department. The participating employe and the
9 employer are solely responsible for determining the amount of contributions that
10 may be made to the retirement system under this subdivision and monitoring the
11 annual contributions for compliance with any limitations imposed on contributions
12 by the Internal Revenue Code, applicable regulations adopted under the Internal
13 Revenue Code and rules of the department.

14 **SECTION 11.** 40.05 (1) (a) 7. of the statutes is amended to read:

15 40.05 (1) (a) 7. Subject to any applicable limitations under the internal revenue
16 code, a participating employe may elect to use part or all of his or her accumulated
17 ~~after-tax~~ additional contributions, including interest, made under subd. 5., ~~other~~
18 ~~than contributions treated by the department as contributions to a tax sheltered~~
19 ~~annuity under section 403 (b) of the internal revenue code,~~ to purchase creditable
20 service under this chapter.

21 **SECTION 12.** 40.08 (7) (a) of the statutes is amended to read:

22 40.08 (7) (a) Any overpayment or underpayment of a lump-sum payment
23 under s. 40.25 or a death benefit which is less than 60% of the amount specified in
24 s. 40.25 (1) (a) rounded to the next highest dollar amount, and any annuity payment
25 error which is less than \$2 per month may not be corrected but shall be credited or

1 debited to the employer accumulation reserve or the appropriate insurance account.
2 However, if the amount of unapplied additional contributions or tax-deferred
3 additional contributions would increase an annuity payment by less than \$2 but is
4 more than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest
5 dollar amount, the unapplied additional contributions or tax-deferred additional
6 contributions shall be paid to the annuitant as a lump sum.

7 → SECTION 13. 40.23 (1) (b) of the statutes is amended to read:

8 40.23 (1) (b) Except as provided in par. (bm), all retirement annuities shall be
9 effective on the day following, or on the first day of a month following, the date of
10 separation from the last participating employer by which the participant was
11 employed, as specified by the participant in the written application for the annuity.
12 However, the date shall not be more than 90 days prior to the date of receipt of the
13 application by the department. The participant may specify that additional and
14 tax-deferred additional contribution accumulations shall not be applied to provide
15 an annuity until a subsequent application is filed for an annuity to be paid from the
16 additional and tax-deferred additional contribution accumulations. The
17 subsequent application shall be made as specified under sub. (4) or the department
18 shall automatically distribute the accumulated additional and tax-deferred
19 additional contribution accumulations as a lump sum.

20 → SECTION 14. 40.24 (1) (f) of the statutes is amended to read:

21 40.24 (1) (f) From accumulated additional contributions made under s. 40.05
22 (1) (a) 5. and tax-deferred additional contribution accumulations under s. 40.05 (1)
23 (a) 5m. only, an annuity certain payable for and terminating after the number of
24 months specified by the applicant, regardless of whether the applicant dies before or
25 after the number of months specified, provided that the monthly amount of the

1 annuity certain is at least equal to the minimum amount established under s. 40.25
2 (1) (a). Subject to the period of distribution required under s. 40.23 (4) (b) 2., the
3 number of months specified shall not exceed 180 and shall not be less than 24. If the
4 death of the annuitant occurs prior to the expiration of the certain period, the
5 remaining payments shall be made in accordance with s. 40.73 (2) without regard to
6 any other annuity payments payable to the beneficiary. An annuity under this
7 paragraph may be initiated prior to any other annuity amount provided under this
8 subchapter and prior to age 55 if all other qualifications for receiving an annuity
9 payment are met.

10 **SECTION 15.** 40.24 (3) of the statutes is amended to read:

11 40.24 (3) Any participant specified under sub. (1) (intro.) may elect to receive
12 the amount provided by accumulated additional contributions and tax-deferred
13 additional contributions in a different optional form than the balance of the annuity.

14 **SECTION 16.** 40.24 (7) (a) 4. of the statutes is amended to read:

15 40.24 (7) (a) 4. Benefits paid from accumulated additional contributions and
16 tax-deferred additional contributions.

17 → **SECTION 17.** 40.25 (1) (a) of the statutes is amended to read:

18 40.25 (1) (a) If all other requirements for payment of a retirement annuity are
19 met and if the retirement annuity in the normal form which could be provided under
20 s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that
21 is on or after April 23, 1994, ~~but before the end of the calendar year of 1998~~ or, for
22 a benefit with an effective date in a subsequent calendar year, the monthly amount
23 applied under this paragraph for the previous calendar year increased by the salary
24 index and ignoring fractions of the dollar, the then present value, including
25 additional contributions and tax-deferred additional contributions, of the annuity

1 shall be paid in a single sum instead of as an annuity. The additional contribution
2 accumulations and tax-deferred additional contribution accumulations shall not be
3 included in determining whether a single sum should be paid if the optional form
4 provided by s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

5 ~~SECTION 18. 40.25 (1) (a) of the statutes is amended to read:~~

6 ~~40.25 (1) (a) If all other requirements for payment of a retirement annuity are~~
7 ~~met and if the retirement annuity in the normal form which could be provided under~~
8 ~~s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that~~
9 ~~is on or after April 23, 1994, but before the end of the calendar year of 1993 or, for~~
10 ~~a benefit with an effective date in a subsequent calendar year, the monthly amount~~
11 ~~applied under this paragraph for the previous calendar year increased by the salary~~
12 ~~index and ignoring fractions of the dollar, the then present value, including~~
13 ~~additional contributions, of the annuity shall be paid in a single sum instead of as~~
14 ~~an annuity. The additional contribution accumulations shall not be included in~~
15 ~~determining whether a single sum should be paid if the optional form provided by~~
16 ~~s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.~~

17 ~~SECTION 19.~~ ¹⁸ 40.25 (1) (b) of the statutes is amended to read:

18 40.25 (1) (b) If all other requirements for payment of a retirement annuity are
19 met and if the retirement annuity in the normal form which could be provided under
20 s. 40.23 from all available accumulations and credits, other than accumulations from
21 additional contributions and tax-deferred additional contributions, is more than
22 \$100 and less than \$200 monthly for a benefit with an effective date that is on or after
23 April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for a benefit with
24 an effective date in a subsequent calendar year, the monthly amounts applied under
25 this paragraph for the previous calendar year increased by the salary index and

1 ignoring fractions of the dollar, then any participant may elect to receive, in lieu of
2 the annuity, the then present value, including additional contributions and
3 tax-deferred additional contributions, of the annuity in a single sum.

4 SECTION ~~20~~¹⁸. 40.25 (3m) of the statutes is amended to read:

5 40.25 (3m) A participant's application for a lump sum payment under sub. (1)
6 (b) or (2), filed after May 7, 1994, shall be signed by both the participant and the
7 participant's spouse, if the participant has been married to that spouse for at least
8 one year immediately preceding the date the application is filed. The department
9 may promulgate rules that allow for the waiver of the requirements of this subsection
10 for a situation in which, by reason of absence or incompetency, the spouse's signature
11 may not be obtained. This subsection does not apply to any benefits paid from
12 accumulated additional contributions and tax-deferred additional contributions.

13 SECTION ~~21~~²⁰. 40.25 (4) of the statutes is amended to read:

14 40.25 (4) If all the requirements for payment of a retirement annuity or a
15 separation benefit are met, except filing of an application, a participant may elect
16 that the accumulation from the participant's additional contributions made under
17 s. 40.05 (1) (a) 5. and tax-deferred additional contributions under s. 40.05 (1) (a) 5m.
18 be paid as a lump sum in lieu of an annuity from those additional contributions.

19 SECTION ~~22~~²¹. 40.26 (2) (a) of the statutes is amended to read:

20 40.26 (2) (a) The then present value of any portion of the terminated annuity
21 which was originally provided by employe or employer additional contributions or
22 tax-deferred additional contributions shall be credited to the corresponding
23 additional contribution account or tax-deferred additional contribution account.

24 SECTION ~~23~~²². 40.26 (2) (b) of the statutes is amended to read: ✓

1 40.26 (2) (b) The amount of the annuity payments, excluding any portion
2 originally provided by additional contributions or tax-deferred additional
3 contributions, which would have been paid under the terminated annuity, if the
4 annuity had been a straight life annuity, prior to the participant's normal retirement
5 date or prior to the annuity termination date, whichever would first occur, shall be
6 credited to a memorandum account which is subject to s. 40.04 (4) (a) 2. and 2m. and
7 (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified
8 domestic relations order, the memorandum account established under this
9 paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

10 ~~SECTION 24.~~ ²⁷ 40.28 (1) (a) 1. of the statutes is amended to read:

11 40.28 (1) (a) 1. The amount of the additional contribution accumulations and
12 tax-deferred additional contribution accumulations reserved for a variable annuity
13 as of the date the annuity begins;

14 ~~SECTION 25.~~ ²⁷ 40.63 (9) (b) of the statutes is amended to read:

15 40.63 (9) (b) If a disability annuitant, prior to attaining the normal retirement
16 date for the annuitant's former participant classification, receives earnings or other
17 earned income from any source whatsoever for personal services, including services
18 performed on a contractual basis, the annuity shall be suspended, except for any
19 amount provided by additional contributions or tax-deferred additional
20 contributions, and no payment shall be payable after the first of the month in which
21 the earnings or earned income received during any calendar year exceed the amount
22 established under sub. (11), except that if payment was being made under sub. (4)
23 the annuity may only be suspended if the annuitant is employed in a law
24 enforcement or fire fighting capacity and then the suspension shall be effective
25 immediately. The suspended amount shall be reinstated on January 1 following the

1 date of suspension, or, if earlier, on the first day of the 2nd month following the
2 termination of personal services. An amount, which is reinstated in any calendar
3 year, other than on January 1 of the calendar year, shall again be suspended for any
4 subsequent month in the calendar year following a month in which the disability
5 annuitant receives any amount of earnings or earned income for personal services.
6 The department may request any earnings or compensation information as it deems
7 necessary to implement the provisions of this paragraph and par. (c).

8 ~~SECTION 26.~~²⁵ 40.63 (10) of the statutes is amended to read:

9 40.63 (10) Upon termination of an annuity in accordance with sub. (9), each
10 participant whose annuity is so terminated shall, as of the beginning of the calendar
11 month following termination, be credited with additional contributions and
12 tax-deferred additional contributions equal to the then present value of the portion
13 of the terminated annuity which was originally provided by the corresponding type
14 of ~~additional~~ contributions. Except for additional contributions and tax-deferred
15 additional contributions, the retirement account of the participant shall be
16 reestablished as if the terminated annuity had never been effective, including
17 crediting of interest and of any contributions and creditable service earned during
18 the period the annuity was in force.

19 ~~SECTION 27.~~²⁴ 40.73 (1) (b) of the statutes is amended to read:

20 40.73 (1) (b) Upon the death of an annuitant, in addition to any amounts
21 payable by virtue of the annuity option elected by an annuitant, the amount
22 determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the
23 effective date of the annuity, or additional contributions and tax-deferred additional

1 contributions not applied to provide an annuity, provided the amounts have not been
2 previously paid out as a lump sum under s. 40.25.

3 (END)

NOTES FOR LRB-2343/1:

1. On page 2, after line 13, insert: "NOTE: This amendment clarifies that the provision relates only to the deferred compensation program established under s. 40.80, Stats., for state employes, not to other deferred compensation programs that may be established by an employer under s. 40.81, Stats."

2. On page 2, after line 17, insert: "NOTE: This provision clarifies that the Wisconsin deferred compensation program is a trust and deferred compensation board members are its trustees."

NOTES FOR LRB-2344/1:

1. On page 2, after line 5, insert: "NOTE: This provision is amended to clarify that a participating employe must have at least three continuous years of creditable current service at the time of application for purchasing forfeited service."

2. On page 2, after line 12, insert: "NOTE: This provision is amended to clarify that the total number of years of forfeited service that the person can purchase is the lesser of 10 years, or a number of years equal to the current creditable service of the employe at the date of application."

3. On page 3, after line 4, insert: "NOTE: This provision is amended to clarify that the participant must have had at least three continuous years of creditable current service at the time of applying to purchase creditable service for service as an employe of the federal government or for service with an employer that was not covered by the Wisconsin Retirement System during the period in which the service was performed but subsequently became a participating employer."

4. On page 3, after line 10, insert: "NOTE: This clarifies that the number of years of creditable service for service with the federal government or an employer that previously did not participate in the Wisconsin Retirement System, that the person can purchase may not exceed the lesser of 10 years or a number of years equal to the current creditable service that the participant has, of the date of application."

NOTE FOR LRB-2345/1:

On page 2, after line 24, insert: "NOTE: This provision repeals and recreates a provision that allows the department of employe trust funds to collect any amount owed for benefits paid through misrepresentation or fraud or error. The current provision does not provide that the amounts owed become a statutory lien. Therefore, any debts to the trust fund are unsecured and can be discharged in bankruptcy. The amended provision will provide the department with a mechanism to secure obligations to the trust fund with a lien against other benefits also administered by the department, if the department has paid the money to a person or an estate as a result of misrepresentation, fraud or error. A notice of the fact that money has been paid to a person or an estate as a result of misrepresentation, fraud or error, constitutes a lien against the person's

account and any annuity, benefit or obligation that the trust fund pays or will pay to the person or the person's beneficiary.”.

NOTE TO LRB-2346/1:

On page 2, after line 8, insert: “NOTE: This change corrects references to the federal tax code's provisions relating to military service credit.”.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2343/P1
RAC:wj:lp

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 40.05 (2) (g) 2.; and *to create* 40.80 (2) (g) of the statutes;
2 **relating to:** deferred compensation programs established by the deferred
3 compensation board (suggested as remedial legislation by the department of
4 employe trust funds).

Analysis by the Legislative Reference Bureau

Under current law, any participant in the Wisconsin retirement system, subject to rules promulgated by the secretary of employe trust funds, may elect as a payout option for a deferred compensation plan established by the deferred compensation board or a plan established by his or her employer, if his or her employer is a local government employer, to have the entire balance treated as an additional contribution to the fixed annuity division of the employe trust fund. (To date, the rules have not been promulgated.) This bill provides that this option is available only for a deferred compensation plan established by the deferred compensation board.

The bill also specifies that the deferred compensation board must serve as trustee of any deferred compensation plan it establishes and must hold the assets and income of the plan in trust for the exclusive benefit of the employes who participate in the plan and their beneficiaries.

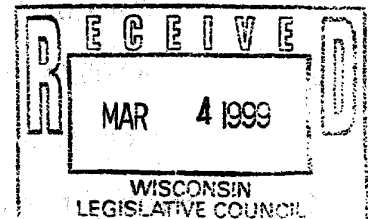
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2345/P1
RAC:cmh:lp

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION



1 **AN ACT to repeal and recreate 40.08 (4) of the statutes; relating to:**
2 reimbursement of moneys paid by the department of employe trust funds as a
3 result of misrepresentation, fraud or error (suggested as remedial legislation
4 by the department of employe trust funds).

Analysis by the Legislative Reference Bureau

Under current law, the department of employe trust funds (DETF) may retain out of any person's annuity or benefit an amount that DETF has determined was paid to the person as a result of misrepresentation, fraud or error. This bill authorizes DETF to secure these inadvertently paid moneys by a lien against the person's account in the employe accumulation reserve of the employe trust fund and any annuity, benefit or obligation of the employe trust fund that is payable or will become payable to the person or the person's beneficiaries.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 40.08 (4) of the statutes is repealed and recreated to read:

2 **40.08 (4) REIMBURSEMENTS OF MONEYS PAID AS A RESULT OF MISREPRESENTATION,**

3 **FRAUD OR ERROR.** (a) If the department has paid any money to a person or estate as
4 a result of misrepresentation, fraud or error, the department shall determine the
5 amount of such payment and shall require that the person or estate reimburse the
6 department for this amount, plus interest at the effective rate of the fixed annuity
7 division.

8 (b) If the department determines that any money has been paid to a person or
9 estate as a result of misrepresentation, fraud or error, the department shall notify
10 the person or the personal representative or special administrator of the person's
11 estate by certified mail of this determination. The department shall send the notice
12 to the last-known address of the person or the personal representative or special
13 administrator of the person's estate. The notice shall inform the person of his or her
14 right to a timely appeal. The notice must be sent within 7 years from the date that
15 the department first acquires actual notice of the alleged misrepresentation, fraud
16 or error.

17 (c) The sending of the notice by the department under par. (b) shall constitute
18 a lien against the person's separate account under s. 40.04 (4) (a) and any annuity,
19 benefit or obligation of the employe trust fund that is payable or will become payable
20 to the person or the person's beneficiaries. This lien takes precedence over all other
21 withholdings, liens or encumbrances, whenever perfected, against the person's
22 separate account under s. 40.04 (4) (a) and any annuity, benefit or obligation of the

1 employe trust fund that is payable or will become payable to the person or the
2 person's beneficiaries.

3 (d) Subject to sub. (10), the department may do any of the following to provide
4 for reimbursement of the amount or any portion of the amount due under par. (a):

5 1. Obtain voluntary repayment from the person or estate within a reasonable
6 period, as determined by the department.

7 2. Foreclose on the lien against the person's separate account under s. 40.04 (4)
8 (a) or any annuity, benefit or obligation of the employe trust fund that is payable or
9 will become payable to the person or the person's beneficiaries. In foreclosing on this
10 lien, the department may retain the amount or portion of the amount out of any
11 annuity, benefit or obligation of the employe trust fund that is payable or will become
12 payable to the person or the person's beneficiaries or may permanently reduce the
13 person's annuity by the actuarial present value of the amount or portion of the
14 amount that is due under par. (a). If the department forecloses on the lien, the
15 department shall notify, by regular mail, the person or personal representative or
16 special administrator of the person's estate of the foreclosure as soon as practical.

17 3. Request that an employer withhold the amount or any portion of the amount
18 from any sum payable by the employer to any person or estate. If an employer
19 receives such a request, the employer shall withhold and remit the amount to the
20 department.

21 4. Bring a civil action against the person or estate for the amount or any portion
22 of the amount that is not otherwise recovered by the department.

23 (e) Any amount that is reimbursed to the department under par. (d) shall be
24 credited to the appropriate benefit plan accounts.

25

(END)

1999 BILL

1 **AN ACT to amend 40.02 (15) (c) 4. of the statutes; relating to: creditable military**
2 **service under the Wisconsin retirement system (suggested as remedial**
3 **legislation by the department of employe trust funds).**

Analysis by the Legislative Reference Bureau

Currently, under certain conditions, a participating employe under the Wisconsin retirement system (WRS) may receive one year of creditable service under WRS for each year of military service, up to a maximum of four years of military service credit. However, the participant may not receive military service credits for military service that is used for the purpose of establishing entitlement to a retirement benefit that is paid by the federal government, other than for the nonregular military service program.

This bill provides the new statutory cross-reference to the U.S. Code provision referring to the nonregular military service program.

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

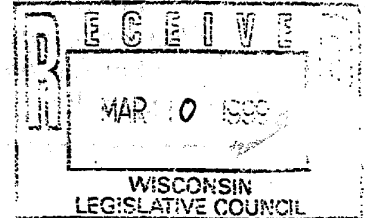
LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2344/P1
RAC:jljgjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION



- 1 **AN ACT to amend** 40.25 (6) (a) 1., 40.25 (6) (a) 2., 40.25 (7) (a) 2. and 40.25 (7) (a)
2 3. of the statutes; **relating to:** purchase of forfeited creditable service under the
3 Wisconsin retirement system (suggested as remedial legislation by the
4 department of employe trust funds).

Analysis by the Legislative Reference Bureau

Under current law, a participating employe in the Wisconsin retirement system (WRS) may purchase creditable service that he or she may have forfeited in the past. In addition, a participating employe may purchase creditable service under the WRS for service as an employe of the federal government or for service as an employe of an employer that was not covered under the WRS during the period in which the service was performed, but that subsequently became an employer under the WRS. In order to purchase such service, the employe must have at least three continuous years of creditable service under the WRS at the time of application and the number of years that an employe may purchase may not exceed the lesser of ten years or the number of years of creditable service that the employe has at the time of application.

This bill provides that the employe must have at least three continuous years of creditable *current* service under the WRS at the time of application. Under current law, creditable *current* service is defined as "the creditable service granted for service performed for a participating employer and for which a participating employe receives earnings after the effective date of participation for that employer".

In addition, the bill provides that the number of years of service that an employe may purchase may not exceed the lesser of ten years or the number of years of

creditable *current* service that the employe has at the time of application, excluding any creditable service that is otherwise purchased under the WRS and any creditable military service granted under the WRS.

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 NOTES provided by the law revision committee of the joint legislative council.

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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 40.25 (6) (a) 1. of the statutes is amended to read:

2 40.25 (6) (a) 1. The participating employe must have at least 3 continuous years
3 of creditable current service under the fund at the time of application for
4 reestablishment of creditable service under this subsection, ~~excluding any creditable~~
5 ~~service that is purchased under this chapter and any creditable military service.~~

6 **SECTION 2.** 40.25 (6) (a) 2. of the statutes is amended to read:

7 40.25 (6) (a) 2. Applications for reestablishment of creditable service must
8 include all creditable service that has been forfeited except that the total number of
9 years which may be reestablished under this subsection may not be greater than the
10 lesser of 10 years or the creditable current service of the participating employe at the
11 date of application, ^{STILL THROUGH} ~~or 10 years, whichever is smaller~~ ~~excluding any creditable service~~
12 ~~that is purchased under this chapter and any creditable military service.~~

13 **SECTION 3.** 40.25 (7) (a) 2. of the statutes is amended to read:

The total service
purchased under this subsection, including any service previously purchased under this
subsection, may not exceed the participant's total creditable current service, excluding any
creditable service purchased under any provision in this chapter and any creditable military
service.

1 40.25 (7) (a) 2. The participant has at least 3 continuous years of creditable
2 current service under the fund at the time of application under subd. 1. ~~excluding~~
3 ~~any creditable service that is purchased under this chapter and any creditable~~
4 ~~military service.~~

5 **SECTION 4.** 40.25 (7) (a) 3. of the statutes is amended to read:

6 40.25 (7) (a) 3. The number of years of creditable service applied for under this
7 paragraph does not exceed the lesser of 10 years or the number of years of creditable
8 current service that the participant has at the date of application ~~or 10 years,~~
9 ~~whichever is less, excluding any creditable service that is purchased under this~~
10 ~~chapter and any creditable military service.~~

11 **SECTION 5. Initial applicability.**

12 (1) This act first applies to applications for the purchase of creditable service
13 under section 40.25 (6) and (7) of the statutes submitted to the department of
14 employe trust funds on the effective date of this subsection.

15 (END)

The total service purchased under this subsection, including any service
previously purchased under this subsection, may not exceed the participant's total creditable
current service, excluding any creditable service purchased under any provision in this chapter
and any creditable military service.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4068/P1dn
RAC:....ch

✓
Gordon Anderson: ✓ ✓

Per your request, at the end of s. 40.25 (6) (a) 2. and (7) (a) 3. I insert the sentence, "The total service purchased under this subsection, including any service previously purchased under this subsection, may not exceed the participant's total creditable current service, excluding any creditable service purchased under any provision of this chapter and any creditable military service." ed

Please note that the provisions in this sentence are different, if not inconsistent, with the provisions in the prior sentence in each subdivision. The first sentence of s. 40.25 (6) (a) 2. provides that the total amount of years that may be reestablished is the lesser of 10 years or the applicant's creditable current service at time of application. The new sentence quoted above provides the total service purchased "may not exceed the participant's total creditable current service". This is a different requirement. If an applicant has 11 years of service that he or she wishes to reestablish, it is unclear if the first sentence of s. 40.25 (6) (a) 2. governs the purchase or if the new sentence governs the purchase. In the first sentence I can only reestablish 10 years; in the second sentence I can purchase my total creditable current service. This same issue arises in s. 40.25 (7) (a) 3. The manner in which I originally drafted the provision did not give rise to this inconsistency. Please advise.

Also, under current law, in s. 40.25 (6) (a) 2., an applicant must apply to reestablish *all* creditable service that has been forfeited. The new language refers to "service previously purchased under this subsection". Query: How can a person purchase service more than once under this subsection if, at any time, the person must purchase *all* creditable service that has been forfeited? This clause seems to imply that a person may make multiple purchases under this subsection for creditable service that has been forfeited. The manner in which I originally drafted the provision did not give rise to this ambiguity. Please advise.

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

Finally, please renew current law s. 40.25(5)(b), which refers to "retentions made under s. 40.08(4)". Does this requirement still work in light of the changes made to s. 40.08(4)?



D-Note
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4068/P1 P2

RAC:....ch
em lt

RM has not

SSA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ^{been} run

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1 AN ACT *to amend* 40.02 (1), 40.02 (2), 40.02 (15) (c) 4., 40.02 (38), 40.04 (4) (a) 1.,
2 40.04 (4) (a) 2., 40.04 (7) (intro.), 40.04 (7) (a) (intro.), 40.04 (7) (c), 40.05 (1) (a)
3 7., 40.05 (2) (g) 2., 40.08 (7) (a), 40.23 (1) (b), 40.24 (1) (f), 40.24 (3), 40.24 (7) (a)
4 4., 40.25 (1) (a), 40.25 (1) (a), 40.25 (1) (b), 40.25 (3m), 40.25 (4), 40.25 (6) (a) 1.,
5 40.25 (6) (a) 2., 40.25 (7) (a) 2., 40.25 (7) (a) 3., 40.26 (2) (a), 40.26 (2) (b), 40.28
6 (1) (a) 1., 40.63 (9) (b), 40.63 (10) and 40.73 (1) (b); **to repeal and recreate** 40.08
7 (4); and **to create** 40.02 (54v), 40.05 (1) (a) 5m. and 40.80 (2) (g) of the statutes;
8 **relating to:** the making of additional retirement contributions by participants
9 in the Wisconsin retirement system ~~(suggested as remedial legislation by the~~
10 ~~department of employe trust funds);~~ deferred compensation programs
11 established by the deferred compensation board ~~(suggested as remedial~~
12 ~~legislation by the department of employe trust funds);~~ purchase of forfeited
13 creditable service under the Wisconsin retirement system ~~(suggested as~~
14 ~~remedial legislation by the department of employe trust funds);~~ reimbursement
15 of moneys paid by the department of employe trust funds as a result of

- 1
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misrepresentation, fraud or error (~~suggested as remedial legislation by the department of employe trust funds~~); creditable military service under the Wisconsin retirement system (suggested as remedial legislation by the department of employe trust funds) (C)

Analysis by the Legislative Reference Bureau

~~*** ANALYSIS FROM -2189/P1***~~

Current law permits the making of additional contributions by participants in the Wisconsin retirement system (WRS). These contributions are in addition to the employer and employe required contributions to the WRS. Additional contributions may be used to purchase an annuity at the time of retirement. This bill specifies that there are two different kinds of additional contributions that may be made by participating employes to the WRS: after-tax additional contributions made under section 401 (a) of the Internal Revenue Code (IRC); and tax-deferred additional contributions made under section 403 (b) of the IRC.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

~~*** ANALYSIS FROM -2343/P1***~~

Under current law, any participant in the Wisconsin retirement system, subject to rules promulgated by the secretary of employe trust funds, may elect as a payout option for a deferred compensation plan established by the deferred compensation board or a plan established by his or her employer, if his or her employer is a local government employer, to have the entire balance treated as an additional contribution to the fixed annuity division of the employe trust fund. (To date, the rules have not been promulgated.) This bill provides that this option is available only for a deferred compensation plan established by the deferred compensation board.

The bill also specifies that the deferred compensation board must serve as trustee of any deferred compensation plan it establishes and must hold the assets and income of the plan in trust for the exclusive benefit of the employes who participate in the plan and their beneficiaries.

~~*** ANALYSIS FROM -2344/P1***~~

Under current law, a participating employe in the Wisconsin retirement system (WRS) may purchase creditable service that he or she may have forfeited in the past. In addition, a participating employe may purchase creditable service under the WRS for service as an employe of the federal government or for service as an employe of an employer that was not covered under the WRS during the period in which the service was performed, but that subsequently became an employer under the WRS. In order to purchase such service, the employe must have at least three continuous years of creditable service under the WRS at the time of application and the number of years that an employe may purchase may not exceed the lesser of ten years or the number of years of creditable service that the employe has at the time of application.

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3

WRS

This bill provides that the employe must have at least three continuous years of creditable *current* service under the WRS at the time of application. Under current law, creditable *current* service is defined as "the creditable service granted for service performed for a participating employer and for which a participating employe receives earnings after the effective date of participation for that employer".

In addition, the bill provides that the number of years of service that an employe may purchase may not exceed the lesser of ten years or the number of years of creditable *current* service that the employe has at the time of application, ~~excluding any creditable service that is otherwise purchased under the WRS and any creditable military service granted under the WRS.~~

~~For further information, see the NOTES provided by the law revision committee of the joint legislative council.~~

*** ANALYSIS FROM -2345/P1 ***

Under current law, the department of employe trust funds (DETF) may retain out of any person's annuity or benefit an amount that DETF has determined was paid to the person as a result of misrepresentation, fraud or error. This bill authorizes DETF to secure these inadvertently paid moneys by a lien against the person's account in the employe accumulation reserve of the employe trust fund and any annuity, benefit or obligation of the employe trust fund that is payable or will become payable to the person or the person's beneficiaries.

~~For further information, see the NOTES provided by the law revision committee of the joint legislative council.~~

*** ANALYSIS FROM -2346/1 ***

Currently, under certain ⁹ conditions, a participating employe under the Wisconsin retirement system (WRS) may receive one year of creditable service under WRS for each year of military service, up to a maximum of four years of military service credit. However, the participant may not receive military service credits for military service that is used for the purpose of establishing entitlement to a retirement benefit that is paid by the federal government, other than for the nonregular military service program. (the)

This bill provides the new statutory cross-reference to the U.S. Code provision referring to the nonregular military service program.

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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

Insert
From page
2

Insert 7-5

1 ***-2189/P1.1* SECTION 1.** 40.02 (1) of the statutes is amended to read:
 2 40.02 (1) "Accumulation" means the total employe required contributions ~~or~~,
 3 employer required contributions ~~or~~, additional contributions or tax-deferred
 4 additional contributions as increased or decreased by application of investment
 5 earnings.

Insert 4-9

6 ***-2189/P1.2* SECTION 2.** 40.02 (2) of the statutes is amended to read:
 7 40.02 (2) "Additional contribution" means any after-tax contribution made by
 8 or on behalf of a participant to the retirement system other than employe and
 9 employer required contributions.

Insert 4-17

10 ***-2346/1.1* SECTION 3.** 40.02 (15) (c) 4. of the statutes is amended to read:
 11 40.02 (15) (c) 4. This paragraph does not apply to any active service used for
 12 the purpose of establishing entitlement to, or the amount of, any benefit, other than
 13 a disability benefit, to be paid by any federal retirement program except OASDHI
 14 and the retired pay for nonregular military service program under 10 USC 1331 to
 15 1337 12731 to 12738 or, if the participant makes an election under s. 40.30 (2), by any
 16 retirement system specified in s. 40.30 (2) other than the Wisconsin retirement
 17 system.

Insert 4-21

18 ***-2189/P1.3* SECTION 4.** 40.02 (38) of the statutes is amended to read:
 19 40.02 (38) "Immediate annuity" means an annuity, not including an annuity
 20 from additional contributions or tax-deferred additional contributions, which begins
 21 to accrue not later than 30 days after termination of employment.

Insert 4-25

22 ***-2189/P1.4* SECTION 5.** ^{create auto-reference "a" / use in insert 4-9} 40.02 (54v) of the statutes is created to read:
 23 40.02 (54v) "Tax-deferred additional contribution" means any contribution
 24 made to the retirement system by a participating employe as a pre-tax deduction
 25 from earnings under section 403 (b) of the Internal Revenue Code.

*create auto-reference
"b"
(use in insert
5-6)*

Insert 5-6

1 ***-2189/P1.5*** SECTION 6. 40.04 (4) (a) 1. of the statutes is amended to read:

2 40.04 (4) (a) 1. Credited with all employe contributions made under s. 40.05 (1),
3 all employer additional contributions made under s. 40.05 (2) (g) 1., all additional
4 contributions under s. 40.05 (2) (g) 2., all tax-deferred additional contributions
5 under s. 40.05 (1) (a) 5m. and all contribution accumulations reestablished under s.
6 40.26 or 40.63 (10).

7 ***-2189/P1.6*** SECTION 7. 40.04 (4) (a) 2. of the statutes is amended to read:

8 40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's
9 closing balance at the effective rate on all employe required contribution
10 accumulations in the variable annuity division, on all employe required
11 contributions in the fixed annuity division on December 31, 1984, on all employe
12 required contributions in the fixed annuity division of participants who are not
13 participating employes after December 31, 1984, ~~and~~ on all employe and employer
14 additional contribution accumulations and on all tax-deferred additional
15 contribution accumulations and with interest on the prior year's closing balance at
16 the assumed benefit rate on all employe required contribution accumulations in the
17 fixed annuity division for participants who are participating employes after
18 December 31, 1984.

19 ***-2189/P1.7*** SECTION 8. 40.04 (7) (intro.) of the statutes is amended to read:

20 40.04 (7) (intro.) The reserves established under subs. (4), (5) and (6) shall be
21 divided both individually and for the purposes of sub. (3) between a fixed annuity
22 division and a variable annuity division. All required ~~and~~, additional and
23 tax-deferred additional contributions shall be credited to the fixed annuity division
24 except:

1 *-2189/P1.8* SECTION 9. 40.04 (7) (a) (intro.) of the statutes is amended to
2 read:

3 40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30,
4 1980. Any participant whose accounts on January 1, 1982, include credits
5 segregated for a variable annuity shall have his or her required ~~and~~, additional and
6 tax-deferred additional contributions made on or after January 1, 1982, credited to
7 the variable annuity division in a manner consistent with the participant's election
8 prior to April 30, 1980, unless prior to January 1, 1982, the participant terminated
9 such election under s. 40.85, 1979 stats. The department shall by rule provide that
10 any participant who elected variable participation prior to April 30, 1980, may elect
11 to cancel that variable participation as to future contributions. The department's
12 rules shall permit a participant who elects or has elected to cancel variable
13 participation as to future contributions, or an annuitant, to elect to transfer previous
14 variable contribution accumulations to the fixed annuity division. A transfer of
15 variable contribution accumulations under this paragraph shall result in the
16 participant receiving the accrued gain or loss from the participant's variable
17 participation. A participant may specify that election to cancel participation in the
18 variable annuity division is conditional. If the participant so specifies the election
19 is effective on the first date on which it may take effect on which the participant:

20 *-2189/P1.9* SECTION ^{create auto-reference "c" (use in intro 5-6)} 10. 40.04 (7) (c) of the statutes is amended to read:

21 40.04 (7) (c) Any participant whose required contributions are segregated in
22 any portion to provide for a variable annuity may direct that any part or all of
23 subsequent additional and tax-deferred additional contributions credited to the
24 participant's account be segregated to provide for a variable annuity and may at any

1 time by filing a form prescribed by the department change the portion being
2 segregated for any future additional contributions.

3 ***-2189/P1.10*** SECTION 11. 40.05 (1) (a) 5m. of the statutes is created to read:

4 40.05 (1) (a) 5m. Tax-deferred additional contributions may be made by any

5 participating employe ~~of an employer covered under section 403 (b) of the Internal~~

6 ~~Revenue Code~~ or of an employer that had at least one employe who made such

7 contributions to the Wisconsin retirement system or its predecessor systems under

8 s. 42.30 (3), 1979 stats., on or before May 17, 1982. The making of contributions

9 under this subdivision shall be subject to any limitations imposed on contributions

10 by the Internal Revenue Code, applicable regulations adopted under the Internal

11 Revenue Code and rules of the department. The participating employe and the

12 employer are solely responsible for determining the amount of contributions that

13 may be made to the retirement system under this subdivision and monitoring the

14 annual contributions for compliance with any limitations imposed on contributions

15 by the Internal Revenue Code, applicable regulations adopted under the Internal

16 Revenue Code and rules of the department.

17 ***-2189/P1.11*** SECTION 12. 40.05 (1) (a) 7. of the statutes is amended to read:

18 40.05 (1) (a) 7. Subject to any applicable limitations under the internal revenue

19 code, a participating employe may elect to use part or all of his or her accumulated

20 ~~after-tax~~ additional contributions, including interest, made under subd. 5., other

21 ~~than contributions treated by the department as contributions to a tax sheltered~~

22 ~~annuity under section 403 (b) of the internal revenue code,~~ to purchase creditable

23 service under this chapter.

24 ***-2343/P1.1*** SECTION 13. 40.05 (2) (g) 2. of the statutes is amended to read:

Insert 7-16

Insert 7-23

1 40.05 (2) (g) 2. Under the rules promulgated under s. 40.03 (2) (r), a participant
2 may, as a payout option for the deferred compensation plan established under subch.
3 ~~VII s. 40.80~~, elect to have the entire balance in the participant's account under subch.
4 ~~VII s. 40.80~~ treated as an additional contribution to the fixed annuity division,
5 subject to any limitations imposed on contributions by the ~~internal revenue code~~
6 Internal Revenue Code, applicable regulations adopted under the ~~internal revenue~~
7 ~~code~~ Internal Revenue Code and rules of the department. Additional contributions
8 under this subdivision shall be available for all benefit purposes and shall be
9 administered and invested on the same basis as employe additional contributions,
10 except that ss. 40.24 (1) (f) and 40.25 (4) do not apply to additional contributions
11 under this subdivision and s. 40.26 does not apply to an annuity received from
12 additional contributions under this subdivision.

13 ***-2345/P1.1*** SECTION 14. 40.08 (4) of the statutes is repealed and recreated
14 to read:

15 40.08 (4) REIMBURSEMENTS OF MONEYS PAID AS A RESULT OF MISREPRESENTATION,
16 FRAUD OR ERROR. (a) If the department has paid any money to a person or estate as
17 a result of misrepresentation, fraud or error, the department shall determine the
18 amount of such payment and shall require that the person or estate reimburse the
19 department for this amount, plus interest at the effective rate of the fixed annuity
20 division.

21 (b) If the department determines that any money has been paid to a person or
22 estate as a result of misrepresentation, fraud or error, the department shall notify
23 the person or the personal representative or special administrator of the person's
24 estate by certified mail of this determination. The department shall send the notice
25 to the last-known address of the person or the personal representative or special

Insert 8-12

1 administrator of the person's estate. The notice shall inform the person of his or her
2 right to a timely appeal. The notice must be sent within 7 years from the date that
3 the department first acquires actual notice of the alleged misrepresentation, fraud
4 or error.

5 (c) The sending of the notice by the department under par. (b) shall constitute
6 a lien against the person's separate account under s. 40.04 (4) (a) and any annuity,
7 benefit or obligation of the employe trust fund that is payable or will become payable
8 to the person or the person's beneficiaries. This lien takes precedence over all other
9 withholdings, liens or encumbrances, whenever perfected, against the person's
10 separate account under s. 40.04 (4) (a) and any annuity, benefit or obligation of the
11 employe trust fund that is payable or will become payable to the person or the
12 person's beneficiaries.

13 (d) Subject to sub. (10), the department may do any of the following to provide
14 for reimbursement of the amount or any portion of the amount due under par. (a):

15 1. Obtain voluntary repayment from the person or estate within a reasonable
16 period, as determined by the department.

17 2. Foreclose on the lien against the person's separate account under s. 40.04 (4)
18 (a) or any annuity, benefit or obligation of the employe trust fund that is payable or
19 will become payable to the person or the person's beneficiaries. In foreclosing on this
20 lien, the department may retain the amount or portion of the amount out of any
21 annuity, benefit or obligation of the employe trust fund that is payable or will become
22 payable to the person or the person's beneficiaries or may permanently reduce the
23 person's annuity by the actuarial present value of the amount or portion of the
24 amount that is due under par. (a). If the department forecloses on the lien, the

1 department shall notify, by regular mail, the person or personal representative or
2 special administrator of the person's estate of the foreclosure as soon as practical.

3 3. Request that an employer withhold the amount or any portion of the amount
4 from any sum payable by the employer to any person or estate. If an employer
5 receives such a request, the employer shall withhold and remit the amount to the
6 department.

7 4. Bring a civil action against the person or estate for the amount or any portion
8 of the amount that is not otherwise recovered by the department.

9 (e) Any amount that is reimbursed to the department under par. (d) shall be
10 credited to the appropriate benefit plan accounts.

11 *-2189/P1.12* SECTION 15. 40.08 (7) (a) of the statutes is amended to read:

12 40.08 (7) (a) Any overpayment or underpayment of a lump-sum payment
13 under s. 40.25 or a death benefit which is less than 60% of the amount specified in
14 s. 40.25 (1) (a) rounded to the next highest dollar amount, and any annuity payment
15 error which is less than \$2 per month may not be corrected but shall be credited or
16 debited to the employer accumulation reserve or the appropriate insurance account.
17 However, if the amount of unapplied additional contributions or tax-deferred
18 additional contributions would increase an annuity payment by less than \$2 but is
19 more than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest
20 dollar amount, the unapplied additional contributions or tax-deferred additional
21 contributions shall be paid to the annuitant as a lump sum.

22 *-2189/P1.13* SECTION 16. 40.23 (1) (b) of the statutes is amended to read:

23 40.23 (1) (b) Except as provided in par. (bm), all retirement annuities shall be
24 effective on the day following, or on the first day of a month following, the date of
25 separation from the last participating employer by which the participant was

Insert 10-10

Insert 10-21

1 employed, as specified by the participant in the written application for the annuity.
 2 However, the date shall not be more than 90 days prior to the date of receipt of the
 3 application by the department. The participant may specify that additional and
 4 tax-deferred additional contribution accumulations shall not be applied to provide
 5 an annuity until a subsequent application is filed for an annuity to be paid from the
 6 additional and tax-deferred additional contribution accumulations. The
 7 subsequent application shall be made as specified under sub. (4) or the department
 8 shall automatically distribute the accumulated additional and tax-deferred
 9 additional contribution accumulations as a lump sum.

10 ***-2189/P1.14* SECTION 17.** *create auto-reference "d" (use in insert 12-16)* 40.24 (1) (f) of the statutes is amended to read:

11 40.24 (1) (f) From accumulated additional contributions made under s. 40.05
 12 (1) (a) 5. and tax-deferred additional contribution accumulations ^{made} under s. 40.05 (1)
 13 (a) 5m. only, an annuity certain payable for and terminating after the number of
 14 months specified by the applicant, regardless of whether the applicant dies before or
 15 after the number of months specified, provided that the monthly amount of the
 16 annuity certain is at least equal to the minimum amount established under s. 40.25
 17 (1) (a). Subject to the period of distribution required under s. 40.23 (4) (b) 2., the
 18 number of months specified shall not exceed 180 and shall not be less than 24. If the
 19 death of the annuitant occurs prior to the expiration of the certain period, the
 20 remaining payments shall be made in accordance with s. 40.73 (2) without regard to
 21 any other annuity payments payable to the beneficiary. An annuity under this
 22 paragraph may be initiated prior to any other annuity amount provided under this
 23 subchapter and prior to age 55 if all other qualifications for receiving an annuity
 24 payment are met.

25 ***-2189/P1.15* SECTION 18.** 40.24 (3) of the statutes is amended to read:

Insert 11-9

INSERT 12-6

1 40.24 (3) Any participant specified under sub. (1) (intro.) may elect to receive
2 the amount provided by accumulated additional contributions and tax-deferred
3 additional contributions in a different optional form than the balance of the annuity.

4 *-2189/P1.16* SECTION 19. ^{create auto-reference "e" (use in insert 12-6)} 40.24 (7) (a) 4. of the statutes is amended to read:

5 40.24 (7) (a) 4. Benefits paid from accumulated additional contributions and
6) tax-deferred additional contributions.

7 *-2189/P1.17* SECTION 20. 40.25 (1) (a) of the statutes is amended to read:

8 40.25 (1) (a) If all other requirements for payment of a retirement annuity are
9 met and if the retirement annuity in the normal form which could be provided under
10 s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that
11 is on or after April 23, 1994, ^{plain comma} ~~but before the end of the calendar year of 1993~~ ^{strike} or, for
12 a benefit with an effective date in a subsequent calendar year, the monthly amount
13 applied under this paragraph for the previous calendar year increased by the salary
14 index and ignoring fractions of the dollar, the then present value, including
15 additional contributions and tax-deferred additional contributions, of the annuity
16 shall be paid in a single sum instead of as an annuity. The additional contribution
17 accumulations and tax-deferred additional contribution accumulations shall not be
18 included in determining whether a single sum should be paid if the optional form
19 provided by s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

20 *-2189/P1.18* SECTION 21. 40.25 (1) (a) of the statutes is amended to read:
21 40.25 (1) (a) If all other requirements for payment of a retirement annuity are
22 met and if the retirement annuity in the normal form which could be provided under
23 s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that
24 is on or after April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for
25 a benefit with an effective date in a subsequent calendar year, the monthly amount

1 applied under this paragraph for the previous calendar year increased by the salary
 2 index and ignoring fractions of the dollar, the then present value, including
 3 additional contributions, of the annuity shall be paid in a single sum instead of as
 4 an annuity. The additional contribution accumulations shall not be included in
 5 determining whether a single sum should be paid if the optional form provided by
 6 s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

7 *creates auto reference of 11/14/8 in mark*
 -2189/P1.19 SECTION **(22)** 40.25 (1) (b) of the statutes is amended to read:

8 40.25 (1) (b) If all other requirements for payment of a retirement annuity are
 9 met and if the retirement annuity in the normal form which could be provided under
 10 s. 40.23 from all available accumulations and credits, other than accumulations from
 11 additional contributions and tax-deferred additional contributions, is more than
 12 \$100 and less than \$200 monthly for a benefit with an effective date that is on or after
 13 April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for a benefit with
 14 an effective date in a subsequent calendar year, the monthly amounts applied under
 15 this paragraph for the previous calendar year increased by the salary index and
 16 ignoring fractions of the dollar, then any participant may elect to receive, in lieu of
 17 the annuity, the then present value, including additional contributions and
 18 tax-deferred additional contributions, of the annuity in a single sum.

19 ***-2189/P1.20*** SECTION **23**. 40.25 (3m) of the statutes is amended to read:

20 40.25 (3m) A participant's application for a lump sum payment under sub. (1)
 21 (b) or (2), filed after May 7, 1994, shall be signed by both the participant and the
 22 participant's spouse, if the participant has been married to that spouse for at least
 23 one year immediately preceding the date the application is filed. The department
 24 may promulgate rules that allow for the waiver of the requirements of this subsection
 25 for a situation in which, by reason of absence or incompetency, the spouse's signature

1 may not be obtained. This subsection does not apply to any benefits paid from
2 accumulated additional contributions and tax-deferred additional contributions.

3 *create auto-reference "g" / use in insert 14-8*
-2189/P1.21 SECTION **24** 40.25 (4) of the statutes is amended to read:

4 40.25 (4) If all the requirements for payment of a retirement annuity or a
5 separation benefit are met, except filing of an application, a participant may elect
6 that the accumulation from the participant's additional contributions made under
7 s. 40.05 (1) (a) 5. and tax-deferred additional contributions ^{made} under s. 40.05 (1) (a) 5m.

8 be paid as a lump sum in lieu of an annuity from those additional contributions.

9 ***-2344/P1.1*** SECTION **25**. 40.25 (6) (a) 1. of the statutes is amended to read:

10 40.25 (6) (a) 1. The participating employe must have at least 3 continuous years
11 of creditable current service under the fund at the time of application for
12 reestablishment of creditable service under this subsection, ~~excluding any creditable~~
13 ~~service that is purchased under this chapter and any creditable military service.~~

14 ***-2344/P1.2*** SECTION **26**. 40.25 (6) (a) 2. of the statutes is amended to read:

15 40.25 (6) (a) 2. Applications for reestablishment of creditable service must
16 include all creditable service that has been forfeited except that the total number of
17 years which may be reestablished under this subsection may not be greater than the
18 lesser of 10 years or the creditable current service of the participating employe at the
19 date of application, ~~or 10 years, whichever is smaller~~ ~~excluding any creditable service~~
20 ~~that is purchased under this chapter and any creditable military service.~~

21 ***-2344/P1.3*** SECTION **27**. 40.25 (7) (a) 2. of the statutes is amended to read:

22 40.25 (7) (a) 2. The participant has at least 3 continuous years of creditable
23 current service under the fund at the time of application under subd. 1. ~~excluding~~
24 ~~any creditable service that is purchased under this chapter and any creditable~~
25 ~~military service.~~

Insert 14-8

insert 14-13

Insert

Insert 14-21

insert 14-25

Insert A
keep plain period

1 ***-2344/P1.4*** SECTION 28. 40.25 (7) (a) 3. of the statutes is amended to read:

2 40.25 (7) (a) 3. The number of years of creditable service applied for under this
3 paragraph does not exceed the lesser of 10 years or the number of years of creditable
4 current service that the participant has at the date of application ~~or 10 years,~~
5 ~~whichever is less, excluding any creditable service that is purchased under this~~

Insert
A

6 ~~chapter and any creditable military service.~~ (Insert A)

Insert
15-6

7 ***-2189/P1.22*** SECTION 29. 40.26 (2) (a) of the statutes is amended to read:

8 40.26 (2) (a) The then present value of any portion of the terminated annuity
9 which was originally provided by employe or employer additional contributions or
10 tax-deferred additional contributions shall be credited to the corresponding
11 additional contribution account or tax-deferred additional contribution account.

12 ***-2189/P1.23*** SECTION 30. 40.26 (2) (b) of the statutes is amended to read:

13 40.26 (2) (b) The amount of the annuity payments, excluding any portion
14 originally provided by additional contributions or tax-deferred additional
15 contributions, which would have been paid under the terminated annuity, if the
16 annuity had been a straight life annuity, prior to the participant's normal retirement
17 date or prior to the annuity termination date, whichever would first occur, shall be
18 credited to a memorandum account which is subject to s. 40.04 (4) (a) 2. and 2m. and
19 (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified
20 domestic relations order, the memorandum account established under this
21 paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

Insert 15-21

22 ***-2189/P1.24*** SECTION 31. 40.28 (1) (a) 1. of the statutes is amended to read:

23 40.28 (1) (a) 1. The amount of the additional contribution accumulations and
24 tax-deferred additional contribution accumulations reserved for a variable annuity
25 as of the date the annuity begins;

Insert 15-25

1 ***-2189/P1.25* SECTION 32.** 40.63 (9) (b) of the statutes is amended to read:

2 40.63 (9) (b) If a disability annuitant, prior to attaining the normal retirement
3 date for the annuitant's former participant classification, receives earnings or other
4 earned income from any source whatsoever for personal services, including services
5 performed on a contractual basis, the annuity shall be suspended, except for any
6 amount provided by additional contributions or tax-deferred additional
7 contributions, and no payment shall be payable after the first of the month in which
8 the earnings or earned income received during any calendar year exceed the amount
9 established under sub. (11), except that if payment was being made under sub. (4)
10 the annuity may only be suspended if the annuitant is employed in a law
11 enforcement or fire fighting capacity and then the suspension shall be effective
12 immediately. The suspended amount shall be reinstated on January 1 following the
13 date of suspension, or, if earlier, on the first day of the 2nd month following the
14 termination of personal services. An amount, which is reinstated in any calendar
15 year, other than on January 1 of the calendar year, shall again be suspended for any
16 subsequent month in the calendar year following a month in which the disability
17 annuitant receives any amount of earnings or earned income for personal services.
18 The department may request any earnings or compensation information as it deems
19 necessary to implement the provisions of this paragraph and par. (c).

20 ***-2189/P1.26* SECTION 33.** 40.63 (10) of the statutes is amended to read:

21 40.63 (10) Upon termination of an annuity in accordance with sub. (9), each
22 participant whose annuity is so terminated shall, as of the beginning of the calendar
23 month following termination, be credited with additional contributions and
24 tax-deferred additional contributions equal to the then present value of the portion
25 of the terminated annuity which was originally provided by the corresponding type

Insert 17-5

1 of additional contributions. Except for additional contributions and tax-deferred
2 additional contributions, the retirement account of the participant shall be
3 reestablished as if the terminated annuity had never been effective, including
4 crediting of interest and of any contributions and creditable service earned during
5 the period the annuity was in force.

Insert 17-12

6 ***-2189/P1.27* SECTION 34.** 40.73 (1) (b) of the statutes is amended to read:
7 40.73 (1) (b) Upon the death of an annuitant, in addition to any amounts
8 payable by virtue of the annuity option elected by an annuitant, the amount
9 determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the
10 effective date of the annuity, or additional contributions and tax-deferred additional
11 contributions not applied to provide an annuity, provided the amounts have not been
12 previously paid out as a lump sum under s. 40.25.

Insert 17-16

13 ***-2343/P1.2* SECTION 35.** 40.80 (2) (g) of the statutes is created to read:
14 40.80 (2) (g) Serve as trustee of any deferred compensation plan established
15 under this section and hold the assets and income of the plan in trust for the exclusive
16 benefit of the employes who participate in the plan and their beneficiaries.

17 ***-2344/P1.5* SECTION 36. Initial applicability.**

18 (1) ~~This act~~ first applies to applications for the purchase of creditable service
19 under section 40.25 (6) and (7) of the statutes submitted to the department of
20 employe trust funds on the effective date of this subsection.

21 (END)

To treatment of section 40.25 (6) (a) 1. and 2. and
(7) (a) 2. and 3. of the statutes