

WFO  
some inserts are out of order

NOTES FOR LRB-2189/1:

✓  
4-5

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.

4-6

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 48. <sup>5</sup> use auto-reference "a" / created on page 4

✓  
4-25

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.

✓  
4-21

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

✓  
5-6

5. On page 3, after line 5, insert NOTE: SECTIONS 5/10/8 amend provisions relating to the accounting of contributions to create separate accounting for each category of additional contributions. <sup>6</sup> <sup>10</sup> use auto-reference "c" (created on page 9)  
use auto-reference "b" (created on page 5)

✓  
7-16

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.

✓  
7-23

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.

✓  
10-21

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.

✓  
11-9

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. <sup>17</sup> <sup>19</sup> use auto-reference "d" (created on page 11)  
use auto-reference "e" (created on page 11)

✓  
12-6

10. On page 7, after line 7, insert NOTE: The changes made by SECTIONS 14/15/16 to provisions relating to annuity options, clarify that these provisions apply to both categories of additional contributions. <sup>17</sup> <sup>19</sup>

✓  
14-8

11. On page 9, after line 18, insert NOTE: SECTIONS 17/18/19/20 amend provisions relating to lump sum payments to clarify that the provisions apply to both categories of additional contributions. <sup>22</sup> <sup>24</sup>

use auto-reference "f" (from 8. 13)

use auto-reference "g" (from p. 14)

NOTES FOR LRB-2343/1:

✓  
8-12 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 employees, not to other deferred compensation programs that may be established by an employer under s. 40.81, Stats."

17-16 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:

✓  
14-13 1. On page 2, after line 5, insert: "NOTE: This provision is amended to clarify that a participating employee must have at least three continuous years of creditable current service at the time of application for purchasing forfeited service."

14-21 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~~ ten years, or a number of years equal to the current creditable service of the employee at the date of application."

✓  
14-25 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 employee 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."

✓  
15-6 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."  
ten

NOTE FOR LRB-2345/1:

✓  
10-10 On page 2, after line 24, insert: "NOTE: This provision repeals and recreates a provision that allows the department of employee 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



10-16  
(and) account and any annuity, benefit or obligation that the trust fund pays or will pay to the person or the person's beneficiary.

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NOTE TO LRB-2346/1:

4-17 ✓  
On page 2, after line 8, insert: "NOTE: This change corrects references to the federal tax code's provisions relating to military service credit."

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✓  
15-21

~~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."~~

✓  
15-25

~~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."~~

✓  
17-5

~~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."~~

✓  
17-12

~~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."~~

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4068/P1ins  
RAC:....ch

**Insert A:**

- no 9
- 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.

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

LRB-4068/P2dn  
RAC:cmh:km

December 15, 1999

Gordon Anderson:

Per your request, at the end of s. 40.25 (6) (a) 2. and (7) (a) 3. I inserted 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."

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.

Finally, please review 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)?

Rick A. Champagne  
Senior Legislative Attorney  
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E-mail: Rick.Champagne@legis.state.wi.us

STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYE TRUST FUNDS  
801 West Badger Road  
Madison, WI 53702

**CORRESPONDENCE MEMORANDUM**

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**DATE:** September 8, 1999  
**TO:** Dave Stella  
**FROM:** Linda Owen  
**SUBJECT:** Law Revision Committee Proposed Remedial Legislation

One additional concern has been raised regarding the amount of forfeited and other governmental service that a participating employe can purchase. This issue requires an additional change to the proposed statutory language.

Participants first became eligible to buy forfeited service on January 1, 1982, under the provisions of Wis. Stats. § 40.25 (6). §40.25 (6) provided that the participant could not purchase more forfeited service than the participant's creditable service at the time of the purchase. It was clearly the intent of the legislature to preclude participants from buying more forfeited service than the actual amount of service they had earned since returning to WRS employment ("current creditable service"). ETF 9.01 (3), Wis. Admin., also became effective on that date; this rule restricted participants to buying forfeited service only once.

ETF 20.15 (3) [as renumbered from ETF 9.01 (3)] was repealed effective January 1, 1997, to allow participating employes to make multiple service purchases. This change was necessarily made in conjunction with 1995 WA 302, which clarified that payments to purchase WRS creditable service were subject to IRS contribution limits under Section 415(c).

The recommended changes in the current draft of the Law Revision Committee proposed remedial legislation were intended to ensure that the total amount of forfeited service (and separately, other government service) that a participant can buy should not exceed the current creditable service earned since returning to WRS employment. Previously purchased creditable service should not increase the amount of service a participant can buy in a subsequent purchase.

**Example:** Participant has 10 years of forfeited service, and has been back to work for 3 years. He purchases 3 years of forfeited service, the maximum that he is eligible to buy. The next month the participant again applies to purchase forfeited service. He now has 6 years of creditable service, and based on the current statutory language he could immediately buy another 6 years of forfeited service, for a total of 9 years. The next month he again applies to buy his forfeited service, and since he now has 9 years of creditable service he can buy the 1 remaining year. The result would be that after returning to work for slightly over 3 years, the participant could have purchased all 10 years of forfeited service.

The current proposed amendment was intended to clarify that creditable service previously purchased could not be used to determine the maximum amount of service that the participant can buy at any given point. Although he could buy the

service in multiple increments, he would not be able to purchase the total 10 years of forfeited service until he had accrued 10 years of current creditable service.

The additional issue that needs clarification in the statutes relates to using the same current creditable service more than once to determine the amount of service a participating employe can purchase. The language in the current draft needs to be revised to clarify the restriction in the following type of situation:

Example: Participant has 10 years of forfeited service, and has been back to work for 3 years. He purchases the 3 years of forfeited service that he is eligible to buy. A month later he again applies to buy forfeited service. The current proposed amendment would seem to allow him to buy another 3 years and 1 month of service, the creditable current service he has earned since returning to WRS employment. He now buys the 3 years 1 month of service, the maximum that he is eligible to buy, and has then purchased a total of 6 years 1 month of forfeited service. "Re-using" the same current creditable service to determine the amount of service that can be purchased for multiple purchases would still permit a participating employe to buy the entire 10 years of forfeited service within a little over 3 years after returning to WRS employment, contrary to the clear intent of the legislature.

**I am proposing that the language in the current Law Revision Committee Proposed Remedial Legislation be amended to read as follows:**

**S. 40.25 (6) (a) 1 and 2 are amended to read:**

s. 40.25 (6) (a) 1. The participating employe must have at least 3 continuous years of creditable current service under the fund at the time of application for reestablishment of creditable service under this subsection.

s. 40.25 (6) (a) 2. Applications for reestablishment of creditable service must include all creditable service that has been forfeited except that the total number of years which may be reestablished under this subsection may not be greater than the lesser of 10 years or the creditable current service of the participating employe at the date of application, ~~or 10 years, whichever is smaller.~~ 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.

**S. 40.25 (7) (a) 2 and 3 are amended to read:**

s. 40.25 (7) (a) 2. The participant has at least 3 continuous years of creditable current service under the fund at the time of application under subd. 1.

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

## Champagne, Rick

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**From:** Stella, Dave  
**Sent:** Wednesday, January 05, 2000 1:46 PM  
**To:** Champagne, Rick  
**Subject:** FW: Remedial legislation on buybacks

Rick, how about this language?

-----Original Message-----

**From:** Owen, Linda  
**Sent:** Wednesday, January 05, 2000 1:42 PM  
**To:** Stella, Dave  
**Subject:** Remedial legislation on buybacks

Revised proposed language attached.



amendedbuybackreme  
d.doc

Linda Owen  
Benefit Plan Policy Analyst  
Phone: (608)261-8164  
E-mail: linda.owen@efw.state.wi.us

## Champagne, Rick

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**From:** Stella, Dave  
**Sent:** Wednesday, January 05, 2000 2:49 PM  
**To:** Champagne, Rick  
**Subject:** RE: Remedial legislation on buybacks

Rick, disregard my voice mail. The new language I gave you should substitute for the language in the current draft of (6) (a) 2. and (7) (a) 3.

-----Original Message-----

**From:** Champagne, Rick  
**Sent:** Wednesday, January 05, 2000 2:29 PM  
**To:** Stella, Dave  
**Subject:** RE: Remedial legislation on buybacks

I like it! Do you still want the other changes that you requested in s. 40.25 (6) (a) 2. and (7) (a) 3.?

-----Original Message-----

**From:** Stella, Dave  
**Sent:** Wednesday, January 05, 2000 1:46 PM  
**To:** Champagne, Rick  
**Subject:** FW: Remedial legislation on buybacks

Rick, how about this language?

-----Original Message-----

**From:** Owen, Linda  
**Sent:** Wednesday, January 05, 2000 1:42 PM  
**To:** Stella, Dave  
**Subject:** Remedial legislation on buybacks

Revised proposed language attached.

<< File: amendedbuybackremed.doc >>

Linda Owen  
Benefit Plan Policy Analyst  
Phone: (608)261-8164  
E-mail: linda.owen@etf.state.wi.us

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**Below is the proposed amended language for the current Law Revision Committee  
Proposed Remedial Legislation:**

**S. 40.25 (6) (a) 2 is amended to read:**

s. 40.25 (6) (a) 2. Applications for reestablishment of creditable service must include all creditable service that has been forfeited except that the number of years which may be reestablished under this subsection may not be greater than the creditable service of the participating employe at the date of application, or 10 years, whichever is smaller. Creditable service previously purchased under this chapter may not be used to determine the maximum amount of service that can be purchased under this section.

**S. 40.25 (7) (a) 3 is amended to read:**

s. 40.25 (7) (a) 3. The number of years of creditable service applied for under this paragraph does not exceed the number of years of creditable service that the participant has at the date of application or 10 years, whichever is less. Creditable service previously purchased under this chapter may not be used to determine the maximum amount of service that can be purchased under this section.

① Redemption system

and 11

12-7

At any time before the expiration of the certain period,  
the annuitant may elect to receive a lump sum  
payment equal to the present value of the remaining monthly  
payments

Insert ↑ at 12-7,

FOR DAVE  
Stella at  
DETF



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-4068/P2 /

RAC:cmh:km

*Johnson*

*RM has been  
run*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*been  
cut*

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) (b), 40.25 (3m), 40.25 (4), 40.25 (6) (a) 1., 40.25 (6) (a)  
5 2., 40.25 (7) (a) 2., 40.25 (7) (a) 3., 40.26 (2) (a), 40.26 (2) (b), 40.28 (1) (a) 1., 40.63  
6 (9) (b), 40.63 (10) and 40.73 (1) (b); **to repeal and recreate** 40.08 (4); and **to**  
7 **create** 40.02 (54v), 40.05 (1) (a) 5m. and 40.80 (2) (g) of the statutes; **relating**  
8 **to:** the making of additional retirement contributions by participants in the  
9 Wisconsin retirement system; deferred compensation programs established by  
10 the deferred compensation board; purchase of forfeited creditable service under  
11 the Wisconsin retirement system; reimbursement of moneys paid by the  
12 department of employe trust funds as a result of misrepresentation, fraud or

1

error; <sup>and</sup> creditable military service under the Wisconsin retirement system  
 (suggested as remedial legislation by the department of employe trust funds).

2

### *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.

Under current law, any participant in the WRS, 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.

Under current law, a participating employe in the 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.

Insert  
Analysis →

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.

Currently, under certain conditions, a participating employe under the WRS may receive one year of creditable service under the 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.

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.

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 ~~or~~,  
3 employer required contributions ~~or~~, additional contributions or tax-deferred  
4 additional contributions as increased or decreased by application of investment  
5 earnings.

NOTE: The definition is amended to specify that it includes both after-tax additional contributions and tax-deferred (pre-tax) additional contributions.

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

1           40.02 (2) "Additional contribution" means any ~~after-tax~~ contribution made by  
2 or on behalf of a participant to the retirement system other than employe and  
3 employer required contributions.

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 5.

4           **SECTION 3.** 40.02 (15) (c) 4. of the statutes is amended to read:

5           40.02 (15) (c) 4. This paragraph does not apply to any active service used for  
6 the purpose of establishing entitlement to, or the amount of, any benefit, other than  
7 a disability benefit, to be paid by any federal retirement program except OASDHI  
8 and the retired pay for nonregular military service program under 10 USC 1331 to  
9 1337 ~~12731 to 12738~~ or, if the participant makes an election under s. 40.30 (2), by any  
10 retirement system specified in s. 40.30 (2) other than the Wisconsin retirement  
11 system.

NOTE: This change corrects references to the federal tax code's provisions relating to military service credit.

12           **SECTION 4.** 40.02 (38) of the statutes is amended to read:

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

NOTE: The definition of "immediate annuity" is amended to exclude both categories of additional contributions.

16           **SECTION 5.** 40.02 (54v) of the statutes is created to read:

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

NOTE: The new definition of "tax-deferred additional contribution" distinguishes these pre-tax contributions from additional (after-tax) contributions.

1 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).

NOTE: SECTIONS 6 to 10 amend provisions relating to the accounting of contributions to create separate accounting for each category of additional contributions.

7

SECTION 7. 40.04 (4) (a) 2. of the statutes <sup>as affected by 1999 Wisconsin Act 11</sup> 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.

*Insert  
5-19*

19

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

1 tax-deferred additional contributions shall be credited to the fixed annuity division  
2 except:

*as amended by 1999  
Wisconsin Act  
11,*

3

SECTION 9. 40.04 (7) (a) (intro.) of the statutes is amended to read:

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

*Insert  
6-21*

21

SECTION 10. 40.04 (7) (c) of the statutes is amended to read:

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

*and tax-deferred  
additional*

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

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

NOTE: The amended provision clarifies that only participating employes 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 employes and employers, not the Wisconsin Retirement System.

16 SECTION 12. 40.05 (1) (a) 7. of the statutes is amended to read:

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

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.

1           **SECTION 13.** 40.05 (2) (g) 2. of the statutes is amended to read:

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

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.

14           **SECTION 14.** 40.08 (4) of the statutes is repealed and recreated 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.

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

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

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

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

22 2. Foreclose on the lien against the person's separate account under s. 40.04 (4)  
23 (a) or any annuity, benefit or obligation of the employe trust fund that is payable or  
24 will become payable to the person or the person's beneficiaries. In foreclosing on this  
25 lien, the department may retain the amount or portion of the amount out of any

1 annuity, benefit or obligation of the employe trust fund that is payable or will become  
2 payable to the person or the person's beneficiaries or may permanently reduce the  
3 person's annuity by the actuarial present value of the amount or portion of the  
4 amount that is due under par. (a). If the department forecloses on the lien, the  
5 department shall notify, by regular mail, the person or personal representative or  
6 special administrator of the person's estate of the foreclosure as soon as practical.

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

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

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

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 provisions 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.

15 SECTION 15. 40.08 (7) (a) of the statutes is amended to read:

16 40.08 (7) (a) Any overpayment or underpayment of a lump-sum payment  
17 under s. 40.25 or a death benefit which is less than 60% of the amount specified in  
18 s. 40.25 (1)(a) rounded to the next highest dollar amount, and any annuity payment  
19 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.

NOTE: This provision, relating to overpayments and underpayments, is amended to recognize that the provisions apply to both categories of additional contributions.

7 **SECTION 16.** 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.

NOTE: This provision is amended to clarify that the treatment of retirement annuities applies to both categories of additional contributions.

20 **SECTION 17.** 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 made under s.

1 40.05 (1) (a) 5m. only, an annuity certain payable for and terminating after the  
2 number of months specified by the applicant, regardless of whether the applicant  
3 dies before or after the number of months specified, provided that the monthly  
4 amount of the annuity certain is at least equal to the minimum amount established  
5 under s. 40.25 (1) (a). Subject to the period of distribution required under s. 40.23  
6 (4) (b) 2., the number of months specified shall not exceed 180 and shall not be less  
7 than 24. If the death of the annuitant occurs prior to the expiration of the certain  
8 period, the remaining payments shall be made in accordance with s. 40.73 (2) without  
9 regard to any other annuity payments payable to the beneficiary. An annuity under  
10 this paragraph may be initiated prior to any other annuity amount provided under  
11 this subchapter and prior to age 55 if all other qualifications for receiving an annuity  
12 payment are met.

13 **SECTION 18.** 40.24 (3) of the statutes is amended to read:

14 40.24 (3) Any participant specified under sub. (1) (intro.) may elect to receive  
15 the amount provided by accumulated additional contributions and tax-deferred  
16 additional contributions in a different optional form than the balance of the annuity.

17 **SECTION 19.** 40.24 (7) (a) 4. of the statutes is amended to read:

18 40.24 (7) (a) 4. Benefits paid from accumulated additional contributions and  
19 tax-deferred additional contributions.

NOTE: The changes made by SECTIONS 17 to 19 to provisions relating to annuity options, clarify that these provisions apply to both categories of additional contributions.

20 **SECTION 20.** 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

INSERT  
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1 is on or after April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for  
2 a benefit with an effective date in a subsequent calendar year, the monthly amount  
3 applied under this paragraph for the previous calendar year increased by the salary  
4 index and ignoring fractions of the dollar, the then present value, including  
5 additional contributions and tax-deferred additional contributions, of the annuity  
6 shall be paid in a single sum instead of as an annuity. The additional contribution  
7 accumulations and tax-deferred additional contribution accumulations shall not be  
8 included in determining whether a single sum should be paid if the optional form  
9 provided by s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

10 **SECTION 21.** 40.25 (1) (b) of the statutes is amended to read:

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

22 **SECTION 22.** 40.25 (3m) of the statutes is amended to read:

23 40.25 (3m) A participant's application for a lump sum payment under sub. (1)  
24 (b) or (2), filed after May 7, 1994, shall be signed by both the participant and the  
25 participant's spouse, if the participant has been married to that spouse for at least

1 one year immediately preceding the date the application is filed. The department  
2 may promulgate rules that allow for the waiver of the requirements of this subsection  
3 for a situation in which, by reason of absence or incompetency, the spouse's signature  
4 may not be obtained. This subsection does not apply to any benefits paid from  
5 accumulated additional contributions and tax-deferred additional contributions.

6 **SECTION 23.** 40.25 (4) of the statutes is amended to read:

7 40.25 (4) If all the requirements for payment of a retirement annuity or a  
8 separation benefit are met, except filing of an application, a participant may elect  
9 that the accumulation from the participant's additional contributions made under  
10 s. 40.05 (1) (a) 5. and tax-deferred additional contributions made under s. 40.05 (1)  
11 (a) 5m. be paid as a lump sum in lieu of an annuity from those additional  
12 contributions.

NOTE: SECTIONS 22 to 24 amend provisions relating to lump sum payments to  
clarify that the provisions apply to both categories of additional contributions. 

13 **SECTION 24.** 40.25 (6) (a) 1. of the statutes is amended to read:

14 40.25 (6) (a) 1. The participating employe must have at least 3 continuous years  
15 of creditable current service under the fund at the time of application for  
16 reestablishment of creditable service under this subsection.

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.

17 **SECTION 25.** 40.25 (6) (a) 2. of the statutes is amended to read:

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

1 ~~under this subsection, including any service previously purchased under this~~  
 2 ~~subsection, may not exceed the participant's total creditable current service,~~  
 3 ~~excluding any creditable service purchased under any provision of this chapter and~~  
 4 ~~any creditable military service.~~

Insert  
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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 ten years, or a number of years equal to the current creditable service of the employe at the date of application.

5 SECTION 26. 40.25 (7) (a) 2. of the statutes is amended to read:

6 40.25 (7) (a) 2. The participant has at least 3 continuous years of creditable  
7 current service under the fund at the time of application under subd. 1.

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.

8 SECTION 27. 40.25 (7) (a) 3. of the statutes is amended to read:

9 ~~40.25 (7) (a) 3. The number of years of creditable service applied for under this~~  
 10 ~~paragraph does not exceed the lesser of 10 years or the number of years of creditable~~  
 11 ~~current service that the participant has at the date of application or 10 years,~~  
 12 ~~whichever is less. The total service purchased under this subsection, including any~~  
 13 ~~service previously purchased under this subsection, may not exceed the participant's~~  
 14 ~~total creditable current service, excluding any creditable service purchased under~~  
 15 ~~any provision of this chapter and any creditable military service.~~

Insert  
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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 ten years or a number of years equal to the current creditable service that the participant has, of the date of application.

SECTION 28. 40.26 (2) (a) of the statutes is amended to read:

1           40.26 (2) (a) The then present value of any portion of the terminated annuity  
2 which was originally provided by employe or employer additional contributions or  
3 tax-deferred additional contributions shall be credited to the corresponding  
4 additional contribution account or tax-deferred additional contribution account.

5           **SECTION 29.** 40.26 (2) (b) of the statutes <sup>as affected by 1999 Wisconsin Act 11,</sup> is amended to read:

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

NOTE: The change, relating to a provision on reentry into covered service, clarifies that it applies to both categories of additional contributions.

15           **SECTION 30.** 40.28 (1) (a) 1. of the statutes is amended to read:

16           40.28 (1) (a) 1. The amount of the additional contribution accumulations and  
17 tax-deferred additional contribution accumulations reserved for a variable annuity  
18 as of the date the annuity begins;

NOTE: This change clarifies that the provision, relating to variable benefits, applies to both categories of additional contributions.

19           **SECTION 31.** 40.63 (9) (b) of the statutes is amended to read:

20           40.63 (9) (b) If a disability annuitant, prior to attaining the normal retirement  
21 date for the annuitant's former participant classification, receives earnings or other  
22 earned income from any source whatsoever for personal services, including services

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

16 **SECTION 32.** 40.63 (10) of the statutes is amended to read:

17 40.63 (10) Upon termination of an annuity in accordance with sub. (9), each  
18 participant whose annuity is so terminated shall, as of the beginning of the calendar  
19 month following termination, be credited with additional contributions and  
20 tax-deferred additional contributions equal to the then present value of the portion  
21 of the terminated annuity which was originally provided by the corresponding type  
22 of additional contributions. Except for additional contributions and tax-deferred  
23 additional contributions, the retirement account of the participant shall be  
24 reestablished as if the terminated annuity had never been effective, including

1 crediting of interest and of any contributions and creditable service earned during  
2 the period the annuity was in force.

NOTE: The change to this provision, relating to disability annuities, clarifies that it applies to both categories of additional contributions.

3 SECTION 33. 40.73 (1) (b) of the statutes is amended to read:

4 40.73 (1) (b) Upon the death of an annuitant, in addition to any amounts  
5 payable by virtue of the annuity option elected by an annuitant, the amount  
6 determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the  
7 effective date of the annuity, or additional contributions and tax-deferred additional  
8 contributions not applied to provide an annuity, provided the amounts have not been  
9 previously paid out as a lump sum under s. 40.25.

NOTE: This provision, relating to death benefits, is amended to provide that it applies to both categories of additional contributions.

10 SECTION 34. 40.80 (2) (g) of the statutes is created to read:

11 40.80 (2) (g) Serve as trustee of any deferred compensation plan established  
12 under this section and hold the assets and income of the plan in trust for the exclusive  
13 benefit of the employees who participate in the plan and their beneficiaries.

NOTE: This provision clarifies that the Wisconsin deferred compensation program is a trust and deferred compensation board members are its trustees.

14 SECTION 35. Initial applicability.

15 (1) The treatment of section 40.25 (6) (a) 1. and 2. and (7) (a) 2. and 3. of the  
16 statutes first applies to applications for the purchase of creditable service under  
17 section 40.25 (6) and (7) of the statutes submitted to the department of employe trust  
18 funds on the effective date of this subsection.

19 (END)

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Act 11

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trust as provided in par. (a) which results from transactions or events described in s. 25.17(14) (f) being credited to the transaction amortization market recognition account and the balance of the distributions being credited to the current income account.

SECTION 11. 40.04 (4) (a) 2. of the statutes is amended to read:

40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's closing balance at the effective rate on all employe required contribution accumulations in the variable annuity division, on all employe required contributions in the fixed annuity division on December 31, 1984, on all employe required contributions in the fixed annuity division of participants who are not participating employes after December 31, 1984, and on all employe and employer additional contribution accumulations and with interest on the prior year's closing balance at the assumed benefit rate on all employe required contribution accumulations in the fixed annuity division for participants who are participating employes after December 31, 1984, but who terminated covered employment before ~~the effective date of this subdivision~~ <sup>stays</sup> ~~or inserts date~~ December 30, 1999

and on all tax-deferred additional contribution accumulations

plain comment

elects or has elected to have any of his or her credited for a variable annuity on or after January shall have 50% of his or her required and additional contributions made on or after the date of election to the variable annuity division. The department's rule provide that any participant who elects or has variable participation prior to April 30, 1980, after January 1, 2001, may elect to cancel that participation as to future contributions. The department's rules shall permit a participant who elected to cancel variable participation as to future contributions, or an annuitant, to elect to transfer variable contribution accumulations to the fixed division. A transfer of variable contribution accumulations under this paragraph shall result in the participant receiving the accrued gain or loss from the participant's variable participation. A participant may specify election to cancel participation in the variable division is conditional. If the participant so specifies election is effective on the first date on which it has effect on which the participant:

SECTION 15. 40.05 (2) (cm) of the statutes is to read:

40.05 (2) (cm) The department may add unfunded prior service liability balance of the Wisconsin retirement system under par. (b) and of each employe that makes contributions under par. (b) to reflect changes in the assumed rate and the assumed across-the-board salary increases specified in (7) and any other factors specified by the actual actuary recommends and the board approves the rate or if otherwise provided by law.

SECTION 12. 40.04 (4) (a) 2g. of the statutes is created to read:

END OF INSERT

40.04 (4) (a) 2g. Credited as of each December 31, with interest on the prior year's closing balance at the effective rate on all employe required contribution accumulations in the fixed annuity division for participants who are participating employes on or after the effective date of this subdivision ... [revisor inserts date].

SECTION 13. 40.04 (4) (a) 2m. of the statutes is amended to read:

40.04 (4) (a) 2m. Debited, if a participant terminates covered employment on or after January 1, 1990, but before the effective date of this subdivision ... [revisor inserts date], and applies for a benefit under s. 40.25 (2), with an amount equal to the amount by which the fixed annuity division interest credited on or after January 1, 1990, but before the effective date of this subdivision ... [revisor inserts date], to employe required contributions, exceeds the interest crediting at an annual rate of 3% on each prior year's closing balance.

SECTION 14. 40.04 (7) (a) (intro.) of the statutes is amended to read:

40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30, 1980, or on or after January 1, 2001. Any participant who was a participant prior to April 30, 1980, and whose accounts on Janu-

SECTION 16. 40.23 (2m) (b) of the statutes is amended to read:

40.23 (2m) (b) Except as provided in s. 40.26 to the limitations under section 415 of the internal revenue code Internal Revenue Code, the initial amount of a normal form annuity shall be an amount equal to 70%, or 65% for participants whose formula rate determined under par. (e) 3. or 85% for participants whose formula rate is determined under par. (e) 4., of the participant's final average earnings plus the amount which will be provided under pars. (c) and (d) or, if less, shall be the monthly amount equal to the sum of the amounts determined under pars. (c), (d) and (e) as modified by (f) and in accordance with the actuarial tables in effect on the annuity effective date. If the participant has not been able to service under both par. (e) 4. and another provision under par. (e), the percent applied under this paragraph

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and tax-deferred additional

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trust as provided in par. (a) which results from transactions or events described in s. 25.17 (14) (f) being credited to the transaction amortization market recognition account and the balance of the distributions being credited to the current income account.

SECTION 11. 40.04 (4) (a) 2. of the statutes is amended to read:

40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's closing balance at the effective rate on all employe required contribution accumulations in the variable annuity division, on all employe required contributions in the fixed annuity division on December 31, 1984, on all employe required contributions in the fixed annuity division of participants who are not participating employes after December 31, 1984, and on all employe and employer additional contribution accumulations and with interest on the prior year's closing balance at the assumed benefit rate on all employe required contribution accumulations in the fixed annuity division for participants who are participating employes after December 31, 1984, but who terminated covered employment before the effective date of this subdivision .... [revisor inserts date].

SECTION 12. 40.04 (4) (a) 2g. of the statutes is created to read:

40.04 (4) (a) 2g. Credited as of each December 31, with interest on the prior year's closing balance at the effective rate on all employe required contribution accumulations in the fixed annuity division for participants who are participating employes on or after the effective date of this subdivision .... [revisor inserts date].

SECTION 13. 40.04 (4) (a) 2m. of the statutes is amended to read:

40.04 (4) (a) 2m. Debited, if a participant terminates covered employment on or after January 1, 1990, but before the effective date of this subdivision .... [revisor inserts date], and applies for a benefit under s. 40.25 (2), with an amount equal to the amount by which the fixed annuity division interest credited on or after January 1, 1990, but before the effective date of this subdivision .... [revisor inserts date], to employe required contributions, exceeds the interest crediting at an annual rate of 3% on each prior year's closing balance.

SECTION 14. 40.04 (7) (a) (intro.) of the statutes is amended to read:

40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30, 1980, or on or after January 1, 2001. Any participant who was a participant prior to April 30, 1980, and whose accounts on January 1, 1982, include credits segregated for a variable annuity shall have his or her required and additional contributions made on or after January 1, 1982, credited to the variable annuity division in a manner consistent with the participant's election prior to April 30, 1980, unless prior to January 1, 1982, the participant terminated such election under s. 40.85, 1979 stats. Any participant who

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elects or has elected to have any of his or her credits segregated for a variable annuity on or after January 1, 2001, shall have 50% of his or her required additional contributions made on or after the date of election credited to the variable annuity division. The department shall by rule provide that any participant who elects or has elected variable participation prior to April 30, 1980, or on or after January 1, 2001, may elect to cancel that variable participation as to future contributions. The department's rules shall permit a participant who elects or has elected to cancel variable participation as to future contributions, or an annuitant, to elect to transfer previous variable contribution accumulations to the fixed annuity division. A transfer of variable contribution accumulations under this paragraph shall result in the participant receiving the accrued gain or loss from the participant's variable participation. A participant may specify that election to cancel participation in the variable annuity division is conditional. If the participant so specifies the election is effective on the first date on which it may take effect on which the participant:

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SECTION 15. 40.05 (2) (cm) of the statutes is created to read:

40.05 (2) (cm) The department may adjust the unfunded prior service liability balance of the Wisconsin retirement system under par. (b) and of each employer that makes contributions under par. (b) to reflect any changes in the assumed rate and the assumption for across-the-board salary increases specified in s. 40.02 (7) and any other factor specified by the actuary if the actuary recommends and the board approves the changes or if otherwise provided by law.

SECTION 16. 40.23 (2m) (b) of the statutes is amended to read:

40.23 (2m) (b) Except as provided in s. 40.26, subject to the limitations under section 415 of the internal revenue code Internal Revenue Code, the initial amount of the normal form annuity shall be an amount equal to 65% 70%, or 65% for participants whose formula rate is determined under par. (e) 3. or 85% for participants whose formula rate is determined under par. (e) 4., of the participant's final average earnings plus the amount which can be provided under pars. (c) and (d) or, if less, shall be in the monthly amount equal to the sum of the amounts determined under pars. (c), (d) and (e) as modified by par. (f) and in accordance with the actuarial tables in effect on the annuity effective date. If the participant has creditable service under both par. (e) 4. and another category under par. (e), the percent applied under this paragraph shall be determined by multiplying the percent that each type of creditable service is of the participant's total creditable service by 85% and 65% or 70%, respectively, and adding the results, except that the resulting benefit may not be less than the amount of the normal form annuity that could be paid based solely on the creditable service under par. (e) 4.

and tax-deferred additional

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4068/lins  
RAC:cmh:km

**Insert Analysis:**

99 In addition, the bill provides that creditable service previously purchased by a participating employe may not be used to determine the maximum amount of service that a participating employe may purchase.

**Insert 12-7:**

no 99 At any time before the expiration of the certain period, the annuitant may elect to receive a lump sum payment equal to the present value of the remaining monthly payments.

**Insert 15-4:**

**SECTION 1.** 40.25 (6) (a) 2. of the statutes is amended to read:

40.25 (6) (a) 2. Applications for reestablishment of creditable service must include all creditable service that has been forfeited except that the number of years which may be reestablished under this subsection may not be greater than the creditable service of the participating employe at the date of application, or 10 years, whichever is smaller. Creditable service previously purchased under this chapter may not be used to determine the maximum amount of service that may be purchased under this subsection.

History: 1981 c. 96, 201; 1981 c. 386 ss. 14 to 16, 19; 1983 a. 290; 1989 a. 13, 166; 1991 a. 152, 269; 1993 a. 229, 360, 426; 1995 a. 302; 1997 a. 69, 173, 237.

**Insert 15-15:**

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

40.25 (7) (a) 3. The number of years of creditable service applied for under this paragraph does not exceed the number of years of creditable service that the participant has at the date of application or 10 years, whichever is less. Creditable service previously purchased under this chapter may not be used to determine the maximum amount of service that may be purchased under this subsection.

History: 1981 c. 96, 201; 1981 c. 386 ss. 14 to 16, 19; 1983 a. 290; 1989 a. 13, 166; 1991 a. 152, 269; 1993 a. 229, 360, 426; 1995 a. 302; 1997 a. 69, 173, 237.

(END OF INSERT)

**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: 01/07/2000

To: Legislative Council - LRC

Relating to LRB drafting number: LRB-4068

**Topic**

Miscellaneous revision provisions affecting the department of employe trust funds

**Subject(s)**

Employ Pub - employe benefits, 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 See pages 17, 16 & 19.

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

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.

Rick A. Champagne, Senior Attorney  
Telephone: (608) 266-9930



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-4068/1 2

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been run

1999 BILL

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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) (b), 40.25 (3m), 40.25 (4), 40.25 (6) (a) 1., 40.25 (6) (a)  
5 2., 40.25 (7) (a) 2., 40.25 (7) (a) 3., 40.26 (2) (a), 40.26 (2) (b), 40.28 (1) (a) 1., 40.63  
6 (9) (b), 40.63 (10) and 40.73 (1) (b); *to repeal and recreate* 40.08 (4); and *to*  
7 *create* 40.02 (54v), 40.05 (1) (a) 5m. and 40.80 (2) (g) of the statutes; **relating**  
8 **to:** the making of additional retirement contributions by participants in the  
9 Wisconsin retirement system; deferred compensation programs established by  
10 the deferred compensation board; purchase of forfeited creditable service under  
11 the Wisconsin retirement system; reimbursement of moneys paid by the  
12 department of employe trust funds as a result of misrepresentation, fraud or

**BILL**

- 1 error; and creditable military service under the Wisconsin retirement system  
2 (suggested as 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.

Under current law, any participant in the WRS, 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.

Under current law, a participating employe in the 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 creditable service previously purchased by a participating employe may not be used to determine the maximum amount of service that a participating employe may purchase.

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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.

Currently, under certain conditions, a participating employe under the WRS may receive one year of creditable service under the 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.

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.** 40.02 (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.

NOTE: The definition is amended to specify that it includes both after-tax additional contributions and tax-deferred (pre-tax) additional contributions.

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

**BILL**

1           40.02 (2) "Additional contribution" means any after-tax contribution made by  
2 or on behalf of a participant to the retirement system other than employe and  
3 employer required contributions.

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 5.

4           **SECTION 3.** 40.02 (15) (c) 4. of the statutes is amended to read:

5           40.02 (15) (c) 4. This paragraph does not apply to any active service used for  
6 the purpose of establishing entitlement to, or the amount of, any benefit, other than  
7 a disability benefit, to be paid by any federal retirement program except OASDHI  
8 and the retired pay for nonregular military service program under 10 USC ~~1331 to~~  
9 ~~1337~~ 12731 to 12738 or, if the participant makes an election under s. 40.30 (2), by any  
10 retirement system specified in s. 40.30 (2) other than the Wisconsin retirement  
11 system.

NOTE: This change corrects references to the federal tax code's provisions relating to military service credit.

12           **SECTION 4.** 40.02 (38) of the statutes is amended to read:

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

NOTE: The definition of "immediate annuity" is amended to exclude both categories of additional contributions.

16           **SECTION 5.** 40.02 (54v) of the statutes is created to read:

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

NOTE: The new definition of "tax-deferred additional contribution" distinguishes these pre-tax contributions from additional (after-tax) contributions.

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1           **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).

NOTE: SECTIONS 6 to 10 amend provisions relating to the accounting of contributions to create separate accounting for each category of additional contributions.

7           **SECTION 7.** 40.04 (4) (a) 2. of the statutes, as affected by 1999 Wisconsin Act 11,  
8 is amended to read:

9           40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's  
10 closing balance at the effective rate on all employe required contribution  
11 accumulations in the variable annuity division, on all employe required  
12 contributions in the fixed annuity division on December 31, 1984, on all employe  
13 required contributions in the fixed annuity division of participants who are not  
14 participating employes after December 31, 1984, and on all employe and employer  
15 additional contribution accumulations and on all tax-deferred additional  
16 contribution accumulations and with interest on the prior year's closing balance at  
17 the assumed benefit rate on all employe required contribution accumulations in the  
18 fixed annuity division for participants who are participating employes after  
19 December 31, 1984, but who terminated covered employment before December 30,  
20 1999.

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

22           40.04 (7) (intro.) The reserves established under subs. (4), (5) and (6) shall be  
23 divided both individually and for the purposes of sub. (3) between a fixed annuity

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1 division and a variable annuity division. All required ~~and~~, additional and  
2 tax-deferred additional contributions shall be credited to the fixed annuity division  
3 except:

4 **SECTION 9.** 40.04 (7) (a) (intro.) of the statutes, as affected by 1999 Wisconsin  
5 Act 11, is amended to read:

6 40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30,  
7 1980, or on or after January 1, 2001. Any participant who was a participant prior  
8 to April 30, 1980, and whose accounts on January 1, 1982, include credits segregated  
9 for a variable annuity shall have his or her required ~~and~~, additional and tax-deferred  
10 additional contributions made on or after January 1, 1982, credited to the variable  
11 annuity division in a manner consistent with the participant's election prior to April  
12 30, 1980, unless prior to January 1, 1982, the participant terminated such election  
13 under s. 40.85, 1979 stats. Any participant who elects or has elected to have any of  
14 his or her credits segregated for a variable annuity on or after January 1, 2001, shall  
15 have 50% of his or her required ~~and~~, additional and tax-deferred additional  
16 contributions made on or after the date of election credited to the variable annuity  
17 division. The department shall by rule provide that any participant who elects or has  
18 elected variable participation prior to April 30, 1980, or on or after January 1, 2001,  
19 may elect to cancel that variable participation as to future contributions. The  
20 department's rules shall permit a participant who elects or has elected to cancel  
21 variable participation as to future contributions, or an annuitant, to elect to transfer  
22 previous variable contribution accumulations to the fixed annuity division. A  
23 transfer of variable contribution accumulations under this paragraph shall result in  
24 the participant receiving the accrued gain or loss from the participant's variable  
25 participation. A participant may specify that election to cancel participation in the

**BILL**

1 variable annuity division is conditional. If the participant so specifies the election  
2 is effective on the first date on which it may take effect on which the participant:

3 **SECTION 10.** 40.04 (7) (c) of the statutes is amended to read:

4 40.04 (7) (c) Any participant whose required contributions are segregated in  
5 any portion to provide for a variable annuity may direct that any part or all of  
6 subsequent additional and tax-deferred additional contributions credited to the  
7 participant's account be segregated to provide for a variable annuity and may at any  
8 time by filing a form prescribed by the department change the portion being  
9 segregated for any future additional and tax-deferred additional contributions.

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

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

NOTE: The amended provision clarifies that only participating employes 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  
employes and employers, not the Wisconsin Retirement System.

23 **SECTION 12.** 40.05 (1) (a) 7. of the statutes is amended to read:

**BILL**

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

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.

7           **SECTION 13.** 40.05 (2) (g) 2. of the statutes is amended to read:

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

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.

20           **SECTION 14.** 40.08 (4) of the statutes is repealed and recreated to read:

**BILL**

1           40.08 (4) REIMBURSEMENTS OF MONEYS PAID AS A RESULT OF MISREPRESENTATION,  
2 FRAUD OR ERROR. (a) If the department has paid any money to a person or estate as  
3 a result of misrepresentation, fraud or error, the department shall determine the  
4 amount of such payment and shall require that the person or estate reimburse the  
5 department for this amount, plus interest at the effective rate of the fixed annuity  
6 division.

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

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

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

**BILL**

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

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

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

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

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

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 provisions 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

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

1           **SECTION 15.** 40.08 (7) (a) of the statutes is amended to read:

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

NOTE: This provision, relating to overpayments and underpayments, is amended to recognize that the provisions apply to both categories of additional contributions.

12          **SECTION 16.** 40.23 (1) (b) of the statutes is amended to read:

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

**BILL**

1 shall automatically distribute the accumulated additional and tax-deferred  
2 additional contribution accumulations as a lump sum.

NOTE: This provision is amended to clarify that the treatment of retirement annuities applies to both categories of additional contributions.

3 SECTION 17. 40.24 (1) (f) of the statutes is amended to read:

4 40.24 (1) (f) From accumulated additional contributions made under s. 40.05  
5 (1) (a) 5. and tax-deferred additional contribution accumulations made under s.  
6 40.05 (1) (a) 5m. only, an annuity certain payable for and terminating after the  
7 number of months specified by the applicant, regardless of whether the applicant  
8 dies before or after the number of months specified, provided that the monthly  
9 amount of the annuity certain is at least equal to the minimum amount established  
10 under s. 40.25 (1) (a). Subject to the period of distribution required under s. 40.23  
11 (4) (b) 2., the number of months specified shall not exceed 180 and shall not be less  
12 than 24. At any time before the expiration of the certain period, the annuitant may  
13 elect to receive a lump-sum payment equal to the present value of the remaining  
14 monthly payments. If the death of the annuitant occurs prior to the expiration of the  
15 certain period, the remaining payments shall be made in accordance with s. 40.73  
16 (2) without regard to any other annuity payments payable to the beneficiary. An  
17 annuity under this paragraph may be initiated prior to any other annuity amount  
18 provided under this subchapter and prior to age 55 if all other qualifications for  
19 receiving an annuity payment are met.

20 SECTION 18. 40.24 (3) of the statutes is amended to read:

21 40.24 (3) Any participant specified under sub. (1) (intro.) may elect to receive  
22 the amount provided by accumulated additional contributions and tax-deferred  
23 additional contributions in a different optional form than the balance of the annuity.

**BILL**

1           **SECTION 19.** 40.24 (7) (a) 4. of the statutes is amended to read:

2           40.24 (7) (a) 4. Benefits paid from accumulated additional contributions and  
3 tax-deferred additional contributions.

NOTE: The changes made by SECTIONS 17 to 19 to provisions relating to annuity options, clarify that these provisions apply to both categories of additional contributions.

4           **SECTION 20.** <sup>create auto-reference "a"</sup> 40.25 (1) (a) of the statutes is amended to read:

5           40.25 (1) (a) If all other requirements for payment of a retirement annuity are  
6 met and if the retirement annuity in the normal form which could be provided under  
7 s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that  
8 is on or after April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for  
9 a benefit with an effective date in a subsequent calendar year, the monthly amount  
10 applied under this paragraph for the previous calendar year increased by the salary  
11 index and ignoring fractions of the dollar, the then present value, including  
12 additional contributions and tax-deferred additional contributions, of the annuity  
13 shall be paid in a single sum instead of as an annuity. The additional contribution  
14 accumulations and tax-deferred additional contribution accumulations shall not be  
15 included in determining whether a single sum should be paid if the optional form  
16 provided by s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

17           **SECTION 21.** 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

**BILL**

1 an effective date in a subsequent calendar year, the monthly amounts applied under  
 2 this paragraph for the previous calendar year increased by the salary index and  
 3 ignoring fractions of the dollar, then any participant may elect to receive, in lieu of  
 4 the annuity, the then present value, including additional contributions and  
 5 tax-deferred additional contributions, of the annuity in a single sum.

6 **SECTION 22.** 40.25 (3m) of the statutes is amended to read:

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

15 **SECTION 23.** <sup>creates auto-ref "b"</sup> 40.25 (4) of the statutes is amended to read:

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

<sup>use auto-ref. "a"</sup> <sup>use auto-ref "b"</sup>  
 NOTE: SECTIONS 22 to 24 amend provisions relating to lump-sum payments to  
 clarify that the provisions apply to both categories of additional contributions.

22 **SECTION 24.** 40.25 (6) (a) 1. of the statutes is amended to read:

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1           40.25 (6) (a) 1. The participating employe must have at least 3 continuous years  
2 of creditable current service under the fund at the time of application for  
3 reestablishment of creditable service under this subsection.

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.

4           **SECTION 25.** 40.25 (6) (a) 2. of the statutes is amended to read:

5           40.25 (6) (a) 2. Applications for reestablishment of creditable service must  
6 include all creditable service that has been forfeited except that the number of years  
7 which may be reestablished under this subsection may not be greater than the  
8 creditable service of the participating employe at the date of application, or 10 years,  
9 whichever is smaller. Creditable service previously purchased under this chapter  
10 may not be used to determine the maximum amount of service that may be purchased  
11 under this subsection.

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 ten years, or a number of years equal to the current creditable service of the employe at the date of application.

12           **SECTION 26.** 40.25 (7) (a) 2. of the statutes is amended to read:

13           40.25 (7) (a) 2. The participant has at least 3 continuous years of creditable  
14 current service under the fund at the time of application under subd. 1.

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.

15           **SECTION 27.** 40.25 (7) (a) 3. of the statutes is amended to read:

16           40.25 (7) (a) 3. The number of years of creditable service applied for under this  
17 paragraph does not exceed the number of years of creditable service that the  
18 participant has at the date of application or 10 years, whichever is less. Creditable

**BILL**

**SECTION 27**

1 service previously purchased under this chapter may not be used to determine the  
2 maximum amount of service that may be purchased under this subsection.

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 ten years or a number of years equal to the current creditable service that the participant has, of the date of application.

3 SECTION <sup>create auto-ref. "c"</sup> 28. 40.26 (2) (a) of the statutes is amended to read:

4 40.26 (2) (a) The then present value of any portion of the terminated annuity  
5 which was originally provided by employe or employer additional contributions or  
6 tax-deferred additional contributions shall be credited to the corresponding  
7 additional contribution account or tax-deferred additional contribution account.

8 SECTION <sup>create auto-ref. "d"</sup> 29. 40.26 (2) (b) of the statutes, as affected by 1999 Wisconsin Act 11,  
9 is amended to read:

10 40.26 (2) (b) The amount of the annuity payments, excluding any portion  
11 originally provided by additional contributions or tax-deferred additional  
12 contributions, which would have been paid under the terminated annuity, if the  
13 annuity had been a straight life annuity, prior to the participant's normal retirement  
14 date or prior to the annuity termination date, whichever would first occur, shall be  
15 credited to a memorandum account which is subject to s. 40.04 (4) (a) 2., 2g. and 2m.  
16 and (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified  
17 domestic relations order, the memorandum account established under this  
18 paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

NOTE: The change relating to a provision on reentry into covered service, clarifies that <sup>(S)</sup> <sup>(C3)</sup> <sup>use auto-ref "c"</sup> <sup>use auto-ref "d"</sup> <sup>(Y)</sup> <sup>made by SECTIONS 28 and 29 in</sup> <sup>the provisions</sup> that applies to both categories of additional contributions.

19 SECTION 30. 40.28 (1) (a) 1. of the statutes is amended to read:

**BILL**

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

NOTE: This change clarifies that the provision, relating to variable benefits, applies to both categories of additional contributions.

4           **SECTION 31.** 40.63 (9) (b) of the statutes is amended to read:

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

23

**SECTION 32.** 40.63 (10) of the statutes is amended to read:

*CS*  
NOTE: The change ~~amends~~ <sup>clarifies</sup> that provisions relating to suspension of disability annuities of persons who receive earnings from personal services do not apply to

**BILL**

1           40.63 (10) Upon termination of an annuity in accordance with sub. (9), each  
2 participant whose annuity is so terminated shall, as of the beginning of the calendar  
3 month following termination, be credited with additional contributions and  
4 tax-deferred additional contributions equal to the then present value of the portion  
5 of the terminated annuity which was originally provided by the corresponding type  
6 of additional contributions. Except for additional contributions and tax-deferred  
7 additional contributions, the retirement account of the participant shall be  
8 reestablished as if the terminated annuity had never been effective, including  
9 crediting of interest and of any contributions and creditable service earned during  
10 the period the annuity was in force.

NOTE: The change to this provision, relating to disability annuities, clarifies that it applies to both categories of additional contributions.

11           **SECTION 33.** 40.73 (1) (b) of the statutes is amended to read:

12           40.73 (1) (b) Upon the death of an annuitant, in addition to any amounts  
13 payable by virtue of the annuity option elected by an annuitant, the amount  
14 determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the  
15 effective date of the annuity, or additional contributions and tax-deferred additional  
16 contributions not applied to provide an annuity, provided the amounts have not been  
17 previously paid out as a lump sum under s. 40.25.

NOTE: This provision, relating to death benefits, is amended to provide that it applies to both categories of additional contributions.

18           **SECTION 34.** 40.80 (2) (g) of the statutes is created to read:

19           40.80 (2) (g) Serve as trustee of any deferred compensation plan established  
20 under this section and hold the assets and income of the plan in trust for the exclusive  
21 benefit of the employees who participate in the plan and their beneficiaries.

NOTE: This provision clarifies that the Wisconsin deferred compensation program is a trust and deferred compensation board members are its trustees.



**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: 01/12/2000

To: Legislative Council - LRC

Relating to LRB drafting number: LRB-4068

**Topic**

Miscellaneous revision provisions affecting the department of employe trust funds

**Subject(s)**

Employ Pub - employe benefits, Employ Pub - retirement

1. **JACKET** the draft for introduction Law Revision Committee - Mark Calderone

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.

Rick A. Champagne, Senior Attorney  
Telephone: (608) 266-9930