



BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

**Testimony of Senator Brian Burke
Assembly Bill 656
Joint Survey Committee on Retirement Systems
February 21, 2000**

In 1990, assistant district attorneys (ADAs) became state employees. At the time, all ADAs outside Milwaukee County were members of the Wisconsin Retirement System (WRS).

As part of an effort to ensure all ADAs were treated fairly, a trailer bill was passed to allow ADAs in Milwaukee County to transfer from the Milwaukee County Employees Retirement System (MCERS) to the WRS.

Milwaukee County ADAs who had vested pension rights under the county retirement system received full retirement benefit reciprocity. Meanwhile, non-vested prosecutors were required to give up any rights to receive benefits from the MCERS. In return, the MCERS was directed to transfer any monies contributed on behalf of these ADAs to the WRS. This transfer never occurred and therefore 48 prosecutors lost credit for all their years of public service performed before 1990.

In the 1999-2001 budget, WRS creditable service was granted to 40 current state employees who were originally non-vested county pension system employees in the Milwaukee County District Attorney's Office on December 31, 1989. To fund this liability, \$80,000 GPR annually will be deducted from the state reimbursement to the County for district attorney salaries and fringe benefits over a five-year period.

Assembly Bill 656 grants creditable service to the remaining eight former ADAs who no longer work for the State of Wisconsin. When they left public service, these individuals detrimentally relied on representations by the state that they would receive full pension credit. To renege on this promise would be unjust.

I ask committee members to give favorable consideration to AB 656.

PRELIMINARY

1999-2000

LRB-3680/1

STATE OF WISCONSIN

APPENDIX TO 1999 ASSEMBLY BILL 656

REPORT OF JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

(Introduced by Representatives Walker, Ward, Stone, Duff, Sykora, M. Lehman, Albers, Staskunas and Plale; cosponsored by Senators Burke, Darling, Rosenzweig, Panzer and George.)

An Act to create 20.515 (1) (bm) and 40.02 (17) (gr) of the statutes; relating to: granting creditable service under the Wisconsin retirement system to certain assistant district attorneys formerly employed by Milwaukee County and making an appropriation.

EXTRACT OF COMMITTEE'S RECOMMENDATION ON THIS BILL

The Joint Survey Committee on Retirement Systems finds that Assembly Bill 656 [represents good public policy, and the Committee recommends its passage] [does not represent good public policy, and the Committee does not recommend its passage].

PURPOSE OF THE BILL

This bill grants creditable service under the Wisconsin Retirement System (WRS) to certain assistant district attorneys who were employed in the Milwaukee County District Attorney's office on December 31, 1989 and who became state employees and WRS participants on January 1, 1990.

Prior to January 1, 1990, assistant district attorneys were employees of Milwaukee County. They were not eligible to participate in the WRS since Milwaukee County had not elected to participate in the plan. Under the county plan, persons who were employed by the county prior to January 1, 1982 could qualify for a deferred vested pension if they completed at least six years of county service. Persons employed on or after January 1, 1982 had to complete at least 10 years of service in order to qualify under the county plan.

Under 1989 Wisconsin Act 336, as of January 1, 1990, all district attorneys became state employees. Milwaukee County assistant district attorneys had the option to remain in the county plan or to transfer to the state plan. However, none of the persons hired after January 1, 1982 had sufficient time in the county plan to be vested since they had not served 10 years. When they joined the WRS as state employees, their credited service began on January 1, 1990.

This bill provides that any assistant district attorney in Milwaukee County who: (1) did not have vested benefit rights under the Milwaukee County Retirement System; (2) became a participating employe in the WRS on January 1, 1990; and (3) terminated state employment before October 29, 1999, will receive creditable service under the WRS for the total period of his or her service in Milwaukee County.

ACTUARIAL EFFECT

Because the bill provides a sum sufficient appropriation to pay in full, the costs of the bill from state general purpose revenues, there is no actuarial effect on the WRS.

PROBABLE COSTS

Approximately 42 Milwaukee County assistant district attorneys were not vested in the Milwaukee County plan. Of these 42, 36 continue in state service. The unfunded prior service liability for six former participants is projected at \$159,283.

PUBLIC POLICY

In *Association of State Prosecutors v. Milwaukee County*, 544 N.W.2d 888 (1996), the Wisconsin Supreme Court ruled that the statute that provided the authority to transfer funds from Milwaukee County retirement plan to the WRS for district attorneys who were not vested in the county plan was a taking of property without due process of law in violation of the 14th Amendment to the U.S. Constitution. The court states that "in the present case, the Legislature could have easily provided service credits to its new employes under the state plan, and funded the resulting larger retirement pensions with state money. Instead, the Legislature chose to give the service credits, but to pay for the larger pensions by transferring money out of the county plan. This it cannot do."

Subsequently, 1999 Wisconsin Act 9 (Biennial State Budget) created s. 40.02 (17) (gm), Stats.:

Any assistant district attorney in a county having a population of 500,000 or more who did not have vested benefit rights under the retirement system established under chapter 201, laws of 1937, who became a participating employe on January 1, 1990, and who is a participating employe on October 29, 1999, shall receive creditable service for the total period of his or her service under the retirement system established under chapter 201, laws of 1937.

This bill would provide for creditable service under the WRS to six former district attorneys who terminated state employment prior to the effective date of Act 9. The bill also provides a sum sufficient to pay the cost of granting creditable service under the provisions of the bill as is required under Wis. Const. art. IV, s. 26, which prohibits the Legislature from granting extra

compensation to a public officer, agent, servant or contractor after those services have been rendered except that:

(3) Subsection (1) shall not apply to increased benefits for persons who have been or shall be granted benefits of any kind under a retirement system when such increased benefits are provided by a legislative act passed on a call of ayes and noes by a three-fourths vote of all the members elected to both houses of the legislature and such act provides for sufficient state funds to cover the costs of the increased benefits.

RECOMMENDATION

The Joint Survey Committee on Retirement Systems finds that 1999 Assembly Bill 656 [represents good public policy, and the Committee recommends its passage] [does not represent good public policy, and the Committee does not recommend its passage].

02/21/00

STATE OF WISCONSIN
JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS
MONDAY, FEBRUARY 21, 2000
11:00 A.M.
ROOM 417 NORTH (GAR), STATE CAPITOL BLDG.

A G E N D A

1. Call to Order and Roll Call.
2. Consideration of the Minutes of the January 24, 2000 Meeting.
3. **Assembly Bill 9** relating to granting creditable service under the Wisconsin retirement system for service in the federal peace corps or VISTA public service programs or in any national service program under the federal National and Community Service Act of 1990.
4. **Assembly Bill 124** relating to creditable military service under the Wisconsin retirement system.
5. **Senate Bill 88** relating to creditable military service under the Wisconsin retirement system.
6. **Assembly Bill 145** relating to granting creditable service under the Wisconsin retirement system for service in the federal public health service.
7. **Senate Bill 105** relating to classifying certain teachers employed by the state as protective occupation participants under the Wisconsin retirement system.
8. **Senate Bill 211** relating to classifying certain nurses employed by the state as protective occupation participants under the Wisconsin retirement system.
9. **Assembly Bill 388** relating to the normal retirement date under the Wisconsin retirement system for individuals employed by certain school districts.
10. **Assembly Bill 426** relating to death benefits provided under the Wisconsin retirement system and making an appropriation.
11. **Assembly Bill 455** relating to establishing a presumption for employment-connected disease for state and county fire fighters.
12. **Assembly Bill 656** relating to granting creditable service under the Wisconsin retirement system to certain assistant district attorneys formerly employed by Milwaukee County and making an appropriation.

(An Executive Session may be held during or immediately following the public hearing on the above and/or any other items pending before the Committee)
13. Other Matters.
14. Adjournment.