

2001 ASSEMBLY BILL 213

March 15, 2001 - Introduced by Representatives VRAKAS, BIES, TURNER, UNDERHEIM, SYKORA, PLOUFF, MUSSER, ALBERS, BALOW, PETTIS, SERATTI and LIPPERT, cosponsored by Senators WIRCH, BURKE, GEORGE and BRESKE. Referred to Joint survey committee on Retirement Systems.

1 **AN ACT to renumber and amend** 40.02 (48) (am) and 40.02 (48) (c); **to amend**
2 40.02 (48) (a), 111.70 (4) (cm) 6. a. and 111.70 (4) (cm) 6. am.; and **to create** 40.02
3 (17) (n), 40.02 (48) (am) 22., 40.02 (48) (b) 5., 40.02 (48) (c) 18., 40.65 (4w) and
4 111.70 (1) (cm) of the statutes; **relating to:** classifying certain county jailers as
5 protective occupation participants under the Wisconsin retirement system and
6 restricting the issues subject to interest arbitration under the Municipal
7 Employment Relations Act.

Analysis by the Legislative Reference Bureau

Under current law, participants under the Wisconsin retirement system (WRS) whose principal duties involve law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning are classified as protective occupation participants. Current law specifically classifies police officers, fire fighters, and various other individuals as protective occupation participants. Under the WRS, the normal retirement age of a protective occupation participant is lower than that of other participants and the percentage multiplier used to calculate retirement annuities is higher for protective occupation participants than for other participants.

This bill specifically classifies county jailers who are granted protective occupation participant status under a collective bargaining agreement as protective occupation participants for the purposes of the WRS.

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In addition, under the Municipal Employment Relations Act, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin employment relations commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. If WERC determines, after investigation, that an impasse exists and that arbitration is required, WERC must submit to the parties a list of seven arbitrators, from which the parties alternately strike names until one arbitrator is left. As an alternative to a single arbitrator, WERC may provide for an arbitration panel that consists of one person selected by each party and one person selected by WERC. As a further alternative, WERC may also provide a process that allows for a random selection of a single arbitrator from a list of seven names submitted by WERC. Under current law, an arbitrator or arbitration panel must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

This bill provides that the parties may not include in their final offers any proposal relating to the granting or revoking of protective occupation participant status under the WRS for county jailers.

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 the bill.

For further information see the *state and local* 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:

1 **SECTION 1.** 40.02 (17) (n) of the statutes is created to read:
2 40.02 (17) (n) Notwithstanding par. (d), each participant who is a county jailer
3 described under s. 40.02 (48) (am) 22. on or after the effective date of this paragraph
4 [revisor inserts date], shall be granted creditable service as a county jailer that
5 was earned on or after the effective date of this paragraph [revisor inserts date],
6 but may not be granted creditable service as a protective occupation participant for
7 any covered service as a county jailer that was earned before the effective date of this
8 paragraph [revisor inserts date], unless that service was earned while the

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1 participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a protective
2 occupation participant.

3 **SECTION 2.** 40.02 (48) (a) of the statutes is amended to read:

4 40.02 **(48)** (a) “Protective occupation participant” means any participant whose
5 principal duties are determined by the participating employer, or, subject to s. 40.06
6 (1) (dm), by the department head in the case of a state employee, or, with respect to
7 a county jailer, under a collective bargaining agreement entered into under subch.
8 IV of ch. 111, to involve active law enforcement or active fire suppression or
9 prevention, provided the duties require frequent exposure to a high degree of danger
10 or peril and also require a high degree of physical conditioning.

11 **SECTION 3.** 40.02 (48) (am) of the statutes is renumbered 40.02 (48) (am) (intro.)
12 and amended to read:

13 40.02 **(48)** (am) (intro.) “Protective occupation participant” includes any
14 participant whose name is certified to the fund as provided in s. 40.06 (1) (d) and (dm)
15 and who is ~~a~~ any of the following:

- 16 1. A conservation warden,₂
- 17 2. A conservation patrol boat captain,₂
- 18 3. A conservation patrol boat engineer,₂
- 19 4. A conservation pilot,₂
- 20 5. A conservation patrol officer,₂
- 21 6. A forest fire control assistant,₂
- 22 7. A member of the state traffic patrol,₂
- 23 8. A state motor vehicle inspector,₂
- 24 9. A police officer,₂
- 25 10. A fire fighter,₂

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1 11. A sheriff,

2 12. An undersheriff,

3 13. A deputy sheriff,

4 14. A state probation and parole officer,

5 15. A county traffic police officer,

6 16. A state forest ranger,

7 17. A fire watcher employed at Wisconsin veterans facilities,

8 18. A state correctional–psychiatric officer,

9 19. An excise tax investigator employed by the department of revenue,

10 20. A special criminal investigation agent in the department of justice,

11 21. An assistant or deputy fire marshal, or person employed under s. 61.66 (1).

12 **SECTION 4.** 40.02 (48) (am) 22. of the statutes is created to read:

13 40.02 **(48)** (am) 22. A county jailer granted protective occupation participant
14 status under a collective bargaining agreement entered into under subch. IV of ch.
15 111.

16 **SECTION 5.** 40.02 (48) (b) 5. of the statutes is created to read:

17 40.02 **(48)** (b) 5. A “county jailer” is any jailer or employee of a county jail, except
18 one whose principal duties are those of a telephone operator, clerk, stenographer,
19 machinist, or mechanic or whose functions do not clearly fall within the scope of
20 active law enforcement even though such an employee is subject to occasional call,
21 or is occasionally called upon, to perform duties within the scope of active law
22 enforcement. County jailer includes any person regularly employed and qualifying
23 as a county jailer, even if temporarily assigned to other duties.

24 **SECTION 6.** 40.02 (48) (c) of the statutes is renumbered 40.02 (48) (c) (intro.) and
25 amended to read:

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1 40.02 (48) (c) (intro.) In s. 40.65, “protective occupation participant” means a
2 participating employee who is ~~a~~ any of the following:

3 1. A police officer,

4 2. A fire fighter,~~an~~

5 3. An individual determined by a participating employer under par. (a) or (bm)
6 to be a protective occupation participant,

7 4. A county undersheriff,

8 5. A deputy sheriff,

9 6. A state probation and parole officer,

10 7. A county traffic police officer,

11 8. A conservation warden,

12 9. A state forest ranger,

13 10. A field conservation employee of the department of natural resources who
14 is subject to call for forest fire control or warden duty,

15 11. A member of the state traffic patrol,

16 12. A state motor vehicle inspector,~~university,~~

17 13. A University of Wisconsin system System full-time police officer,

18 14. A guard or any other employee whose principal duties are supervision and
19 discipline of inmates at a state penal institution,

20 15. An excise tax investigator employed by the department of revenue,

21 16. A person employed under s. 61.66 (1),~~or,~~

22 17. A special criminal investigation agent employed by the department of
23 justice.

24 **SECTION 7.** 40.02 (48) (c) 18. of the statutes is created to read:

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1 40.02 **(48)** (c) 18. A county jailer granted protective occupation participant
2 status under a collective bargaining agreement entered into under subch. IV of ch.
3 111.

4 **SECTION 8.** 40.65 (4w) of the statutes is created to read:

5 40.65 **(4w)** A county jailer described under s. 40.02 (48) (c) 18. who becomes a
6 protective occupation participant on or after the effective date of this subsection ...
7 [revisor inserts date], is not entitled to a duty disability benefit under this section for
8 an injury or disease occurring before the effective date of this subsection [revisor
9 inserts date].

10 **SECTION 9.** 111.70 (1) (cm) of the statutes is created to read:

11 111.70 **(1)** (cm) “County jailer” has the meaning given in s. 40.02 (48) (b) 5.

12 **SECTION 10.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

13 111.70 **(4)** (cm) 6. a. If in any collective bargaining unit a dispute relating to one
14 or more issues, qualifying for interest arbitration under subd. 5s. in a collective
15 bargaining unit to which subd. 5s. applies, has not been settled after a reasonable
16 period of negotiation and after mediation by the commission under subd. 3. and other
17 settlement procedures, if any, established by the parties have been exhausted, and
18 the parties are deadlocked with respect to any dispute between them over wages,
19 hours and conditions of employment to be included in a new collective bargaining
20 agreement, either party, or the parties jointly, may petition the commission, in
21 writing, to initiate compulsory, final and binding arbitration, as provided in this
22 paragraph. At the time the petition is filed, the petitioning party shall submit in
23 writing to the other party and the commission its preliminary final offer containing
24 its latest proposals on all issues in dispute, other than the granting or revoking of
25 protective occupation participation status under ch. 40 for county jailers. Within 14

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1 calendar days after the date of that submission, the other party shall submit in
2 writing its preliminary final offer on all disputed issues to the petitioning party and
3 the commission, other than the granting or revoking of protective occupation
4 participation status under ch. 40 for county jailers. If a petition is filed jointly, both
5 parties shall exchange their preliminary final offers in writing and submit copies to
6 the commission at the time the petition is filed.

7 **SECTION 11.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

8 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
9 commission shall make an investigation, with or without a formal hearing, to
10 determine whether arbitration should be commenced. If in determining whether an
11 impasse exists the commission finds that the procedures set forth in this paragraph
12 have not been complied with and such compliance would tend to result in a
13 settlement, it may order such compliance before ordering arbitration. The validity
14 of any arbitration award or collective bargaining agreement shall not be affected by
15 failure to comply with such procedures. Prior to the close of the investigation each
16 party shall submit in writing to the commission its single final offer containing its
17 final proposals on all issues in dispute that are subject to interest arbitration under
18 this subdivision or under subd. 5s. in collective bargaining units to which subd. 5s.
19 applies. If a party fails to submit a single, ultimate final offer, the commission shall
20 close the investigation based on the last written position of the party. The municipal
21 employer may not submit a qualified economic offer under subd. 5s. after the close
22 of the investigation. Such final offers may include only mandatory subjects of
23 bargaining, except that no final offer may contain any proposal relating to the
24 granting or revoking of protective occupation participant status under ch. 40 for
25 county jailers and except that a permissive subject of bargaining may be included in

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1 the final offer by a party if the other party does not object and shall then be treated
2 as a mandatory subject. No later than such time, the parties shall also submit to the
3 commission a stipulation, in writing, with respect to all matters which are agreed
4 upon for inclusion in the new or amended collective bargaining agreement. The
5 commission, after receiving a report from its investigator and determining that
6 arbitration should be commenced, shall issue an order requiring arbitration and
7 immediately submit to the parties a list of 7 arbitrators. Upon receipt of such list,
8 the parties shall alternately strike names until a single name is left, who shall be
9 appointed as arbitrator. The petitioning party shall notify the commission in writing
10 of the identity of the arbitrator selected. Upon receipt of such notice, the commission
11 shall formally appoint the arbitrator and submit to him or her the final offers of the
12 parties. The final offers shall be considered public documents and shall be available
13 from the commission. In lieu of a single arbitrator and upon request of both parties,
14 the commission shall appoint a tripartite arbitration panel consisting of one member
15 selected by each of the parties and a neutral person designated by the commission
16 who shall serve as a chairperson. An arbitration panel has the same powers and
17 duties as provided in this section for any other appointed arbitrator, and all
18 arbitration decisions by such panel shall be determined by majority vote. In lieu of
19 selection of the arbitrator by the parties and upon request of both parties, the
20 commission shall establish a procedure for randomly selecting names of arbitrators.
21 Under the procedure, the commission shall submit a list of 7 arbitrators to the
22 parties. Each party shall strike one name from the list. From the remaining 5
23 names, the commission shall randomly appoint an arbitrator. Unless both parties
24 to an arbitration proceeding otherwise agree in writing, every individual whose
25 name is submitted by the commission for appointment as an arbitrator shall be a

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1 resident of this state at the time of submission and every individual who is
2 designated as an arbitration panel chairperson shall be a resident of this state at the
3 time of designation.

4 **SECTION 12. Effective date.**

5 (1) This act takes effect on the January 1 after publication.

6 (END)