

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2714/P1dn
RAC:jld:jf

March 25, 2002

Per your instructions, this draft contains the benefit provisions described in "Window Option 3" of the actuary's report. I prepared this draft as a preliminary draft, so that any technical issues can be addressed, as well as any policy changes made, before the amendment is in introducible form. In looking over the amendment, please note the following:

1. The treatment of s. 40.05 (2) (b), (bwd) and (bwm) provides that the increased cost of the early retirement benefits is to be added to the employers' unfunded prior service liability. All state agencies are treated as one unit and all local employers that opt in are pooled as a single employing unit for the purpose of calculating the increase in unfunded prior service liability rates.
2. The treatment of s. 40.05 (2) (c) authorizes the secretary of employee trust funds, upon the written certification of the actuary, to change the employer contribution rates during the calendar year to reflect the increased cost that results from providing the early retirement benefits. This will allow the rates to be increased during the year and not only at the start of the calendar year.
3. Under SECTION 9116 (1c) (a), as you requested, "elected official" is defined to be a participating employee elected to an office by vote of the people.
4. Per your instructions, SECTION 9116 (1c) (b) (intro.) requires that a person have been a participating employee on February 1, 2002. As a result, any participating employee hired after February 1, 2002, will not be eligible for the early retirement program. If this eligibility restriction is challenged as violating the federal or state constitutional requirement of the equal protection of the laws, a court would have to find that there is a reasonable basis justifying the classification. Please note that a possible justification could be that the legislature determines that the early retirement benefits are for public employees who have remained in public employment and not for former employees who may have left public employment long ago and returned to such employment for the sole purpose of receiving the early retirement benefits.
5. Please note that SECTION 9116 (1c) (c) (intro.) ensures that the provisions requiring the reduction in the earliest retirement date under s. 40.23 (1), the increase in years of creditable service, and the increase in the employee's age apply not just for the purpose of calculating the employee's retirement annuity, but also for all other benefit purposes under ch. 40. You may wish to have DETF verify that there are no unintended consequences of having these provisions apply to all benefits provided under ch. 40.

6. Is my assumption in SECTION 9116 (1c) (c) 3. correct? I assume that you still want the penalty provisions for employees who retire under age 57 to apply.
7. In SECTION 9116 (1c) (e), I required that the local employers must elect before July 1, 2002. Is that date OK, or do you want a different date?
8. Per Doug's instructions late Friday afternoon, I did not draft a "freeze," but instead required that all dollar savings resulting from the early retirement program be lapsed or transferred to the general fund (with the exception of federal revenue savings). As a result of this lapse or transfer, coupled with the other across-the-board reductions in 2001 Wisconsin Act 16 and in the joint finance committee sub to Special Session AB-1, most state agencies will have difficulty filling these vacant positions before July 1, 2003.
9. Also, per Doug's instructions, in SECTION 9159 (4cc), I required that local employers fill, no later than January 1, 2004, all law enforcement and fire fighting positions that are vacated by individuals who take the early retirement benefits. Please note that this requirement only applies if there are qualified individuals to fill the positions.
10. Finally, please note that the legislature may not affect "the actuarial soundness" of a retirement plan. *Ass'n of State Prosecutors v. Milwaukee County*, 199 Wis. 2d 549, 562 (1996). If for any reason the recommendations of the actuary providing for increased employer contribution rates to fund the early retirement benefits are not implemented, the early retirement benefits provided under the amendment could be challenged as affecting "the actuarial soundness" of the WRS.

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