

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3211/1

RAC: /:.....

FRI 10/5,
if possible

all

2007 BILL

SA ✓
Stats compare ✓

Gen Cat
- gen. cat

1 AN ACT ...; relating to: creditable military service under the Wisconsin
 2 Retirement System; distribution of moneys to Wisconsin Retirement System
 3 employers under 1999 Wisconsin Act 11; payment of interest by the
 4 Department of Employee Trust Funds on credited or refunded moneys;
 5 Wisconsin Retirement System beneficiary standard sequence; accelerated
 6 death benefit option continuation under the Wisconsin Retirement System; life
 7 insurance benefits administered by the Department of Employee Trust Funds;
 8 definition of the term Internal Revenue Code for purposes of benefit plans
 9 administered by the Department of Employee Trust Funds; interest rates
 10 charged on moneys owed the Department of Employee Trust Funds for benefit
 11 programs; payment of death benefits under the Wisconsin Retirement System;
 12 authority of the Group Insurance Board; eligibility requirements for duty
 13 disability benefit under the Wisconsin Retirement System; amortization period
 14 for unfunded prior service liability under the Wisconsin Retirement System;

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attachment of retirement benefits for delinquent state tax purposes; and
granting rulemaking authority.

waiver of benefits
under the Wisconsin
Retirement System;

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes with respect to the operation and administration of the Wisconsin retirement System (WRS):

1. Currently, the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that, for pension plan purposes, returning uniformed services members, upon reemployment by their former employer, must be treated as if they had been continuously employed by their employer during their period in the uniformed services. Federal law defines the "uniformed services" to mean "the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designed by the president in time of war or national emergency." This bill conforms the WRS to USERRA, permitting returning uniformed services members to receive WRS creditable service for their uniformed service.

2. Under the WRS, a participant who has military service before 1974 may receive up to one, two, three, or four years of military service credit under the WRS if the participant has at least five, ten, fifteen, or twenty years, respectively, of creditable service. This bill provides that the creditable military service is to be prorated in the time of retirement based on the participant's different types of creditable service under the WRS.

3. 1999 Wisconsin Act 11 requires the Employee Trust Funds Board to distribute \$200,000,000 to covered employers in the form of credit balances that could be used to offset employer contributions owed to the WRS. This bill requires that the board complete the distribution before January 1, 2009.

4. Current law prohibits the Department of Employee Trust Funds (DETF) from paying interest on moneys paid in error. The bill allows DETF to pay the interest in accordance with its rules and at a rate of interest established by rule.

5. Under the WRS, for the payment of a death benefit, if there is no designated beneficiary, DETF pays the benefit to the following individuals in the following order: the widow or widower; the children or the children's spouses if the children are deceased; the grandchildren; parents; and brothers and sisters. This bill eliminates the spouses of children who are deceased from being in line to receive the death benefit.

6. Current law allows a WRS annuitant to select an annuity option that pays the annuitant a temporary additional annuity until the end of the month in which the annuitant attains age 62 or dies, whichever occurs first. When the annuitant reaches age 62, the subsequent annuity payments are reduced to fund the cost of the temporary additional annuity that he or she received before attaining age 62. This bill eliminates the requirement that the temporary additional annuity must end at the annuitant's death if the annuitant dies before attaining age 62, instead

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permitting a beneficiary to continue receiving the temporary additional annuity until the month after the month in which the annuitant would have attained age 62. ✓

7. Under current law, to be insured under the group life insurance plan administered by DETF, an eligible employee must file an application with DETF. This bill requires that the application be filed in the manner provided by rule or contract. In addition, the bill also eliminates a requirement that an eligible employee who did not apply for life insurance when initially eligible cannot apply for that life insurance once he or she reaches the age of 55. ✓

8. Currently, under the WRS, retirement benefits that are payable as the result of the death of a WRS participant are not considered to be abandoned until at least ten years have elapsed. This bill provides that the abandonment provisions for retirement benefits are intended to apply to all WRS benefits and benefits under the deferred compensation plan. The bill also specifies when the potential beneficiary of a deceased person, who was insured under the group life insurance program, is treated as having abandoned any claim to the life insurance benefits. Finally, the bill eliminates a current law provision that allows a person to be considered a WRS beneficiary by filing a beneficiary designation without actually applying for the death benefit. ✓

9. For the purpose of benefit plans administered by DETF, the bill provides that the definition of the federal "Internal Revenue Code" is delegated to the federal government and not, as is current law, to enactments of the Wisconsin legislature. ✓

10. Current law provides that for certain moneys owed under public employee benefit plans, DETF may retain the moneys from payments due any person or estate and may charge interest at the effective rate, which is essentially the most recent annual investment return on moneys in the fixed annuity division of the employee trust fund. This bill changes the rate at which interest can be charged to the assumed rate, which is the projected actuarial rate that is needed to fund the benefits under the WRS, unless DETF sets another rate by rule. ✓

11. This bill specifies that the number of guaranteed death benefit payments that are payable to a beneficiary of a participant in the WRS may not exceed the life expectancy of the beneficiary. ✓

12. Under current law, the Group Insurance Board is authorized to hear appeals of determinations made by DETF affecting group insurance plans. This bill requires the Group Insurance Board to hear such appeals. ✓

13. The bill eliminates a requirement that a participant must submit a certified copy of his or her most recent state or federal income tax return to the Wisconsin Retirement Board for income verification purposes under the Duty Disability program. Instead, the bill authorizes, but does not require, the Wisconsin Retirement Board to impose such a requirement. ✓

14. Currently, unfunded prior service liabilities under the WRS are funded over a 40-year amortization period. This bill reduces the amortization period to 30 years for all unfunded prior service liabilities incurred after the bill's effective date. ✓

15. Currently, the Department of Revenue (DOR) may attach WRS benefits for delinquent tax purposes. The bill clarifies that DOR may attach WRS annuity payments, lump sum payments, and disability annuity payments. ✓

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16. Current law permits a participant, beneficiary, or distributee of an estate to waive WRS benefits and provides that the waiver is effective on the first day of the 2nd month commencing after the waiver is received by DETF or on the date specified in the waiver, if later. This bill provides that the waiver is effective 30 days after it is received by DETF or on the date specified in the waiver, if earlier. The bill also provides that the waiver may be cancelled by the participant, beneficiary, or distributee in writing before the effective date.

increase
space
between
components

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 40.02 (8) (a) 2. of the statutes is amended to read:

2 40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all
3 beneficiaries so designated die before filing with the department an application for
4 any death benefit payable, the person determined in the following sequence: group
5 1, widow or widower surviving spouse; group 2, children if at least one child survives
6 of the deceased participant, employee or annuitant, ~~in which event~~ with the share
7 of any deceased child ~~shall be payable to the surviving spouse~~ issue of the child ~~or~~
8 ~~to the surviving children of the child if there is no spouse, per stirpes,~~ or otherwise
9 to the other eligible children in this group or their issue; group 3, ~~grandchild;~~ group
10 4, parent; group 5 4, brother and sister and to the issue of any deceased brother or
11 sister, per stirpes. No payment may be made to a person included in any group if
12 there is a living person in any preceding group.

13 **SECTION 2.** 40.02 (8) (b) of the statutes is renumbered 40.02 (8) (b) (intro.) and
14 amended to read:

15 40.02 (8) (b) (intro.) "Beneficiary" does not include ~~a~~ any of the following:

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1 1. A person who dies before filing with the department ~~either a beneficiary~~
 2 ~~designation applicable to that death benefit or an application for any death benefit~~
 3 payable to the person except as otherwise provided under group 2, under par. (a) 2.
 4 If a person dies after filing a beneficiary application but before the date on which the
 5 benefit check, share draft or other draft is issued or funds are otherwise transferred,
 6 any benefit payable shall be paid in accord with the written designation of
 7 beneficiary, if any, filed with the department in connection with the application or,
 8 if none, in accord with the last designation previously filed by the person, or
 9 otherwise to the person's estate.

10 **SECTION 3.** 40.02 (8) (b) 2. of the statutes is created to read:

11 40.02 (8) (b) 2. For purposes of a group life insurance benefit plan under this
 12 chapter, and at the discretion of the department, an individual who is notified by the
 13 department or insurer that a benefit is payable to the individual because of the death
 14 of an insured person, who is provided with any necessary application form, and who
 15 does not then apply for the benefit within 12 months of the date of notification by the
 16 department that the benefit is payable to the individual.

17 **SECTION 4.** 40.02 (15) (a) of the statutes is renumbered 40.287 (1) (a), and
 18 40.287 (1) (a) (intro.), as renumbered, is amended to read: (intro.)

19 40.287 (1) (a) Criteria. "Creditable military service" means A participant who
 20 returns to participating employment after a period of active service in the U.S. armed
 21 forces shall be granted creditable service in the Wisconsin Retirement System, based
 22 on the total period of service in the U.S. armed forces, provided:

23 **SECTION 5.** 40.02 (15) (b) of the statutes is renumbered 40.287 (1) (b) and
 24 amended to read:

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SECTION 5

1 40.287 (1) (b) Constructive category of employment. The creditable military
 2 service under par. (a) shall be the same type, as set forth in s. 40.23 (2m) (e), as the
 3 participant was receiving prior to entry into the U.S. armed forces.

4 ✓ **SECTION 6.** 40.02 (15) (c) of the statutes is renumbered 40.287 (3), and 40.287
 5 (3) (intro.), (a), (b), (c) and (d), as renumbered, are amended to read:

6 40.287 (3) PRORATED CREDIT FOR CERTAIN OTHER MILITARY SERVICE. (intro.)
 7 Notwithstanding ~~sub. (17) (intro.)~~ subs. (1) and (2) and any other law, any person who
 8 is credited with 5, 10, 15, or 20 or more years of creditable service, not counting any
 9 previously granted creditable military service, may receive creditable military
 10 service at the time of retirement for not more than 1, 2, 3, or 4 years, respectively, of
 11 active service ~~which~~ that meets the ~~standards~~ standard under ~~par. sub. (1) (a) 5.,~~
 12 provided:

13 (a) This ~~paragraph~~ subsection applies only to active military service served
 14 prior to January 1, 1974.

15 (b) Any creditable military service otherwise granted shall be included in
 16 determining the maximum years to be granted under this ~~paragraph~~ subsection.

17 (c) Creditable military service under this ~~paragraph~~ subsection shall be
 18 ~~allocated~~ ^{prorated} at the time of retirement in proportion to the amount of the participant's
 19 creditable service for each of the types of creditable service set forth in s. 40.23 (2m)

20 (e) ~~on the date the participant attains 5, 10, 15, or 20 years of creditable service.~~

21 (d) This ~~paragraph~~ subsection does not apply to any active service used for the
 22 purpose of establishing entitlement to, or the amount of, any benefit, other than a
 23 disability benefit, to be paid by any federal retirement program except OASDHI and
 24 the retired pay for nonregular military service program under 10 USC 1331 to 1337
 25 or, if the participant makes an election under s. 40.30 (2), by any retirement system

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1 specified in s. 40.30 (2) other than the Wisconsin ~~retirement system~~ Retirement
2 System.

3 **SECTION 7.** 40.02 (15) (c) 3. of the statutes is amended to read:

4 ~~40.02 (15) (c) 3. Creditable military service under this paragraph shall be~~
5 ~~allocated prorated at the time of retirement in proportion to the amount of the~~
6 ~~participant's creditable service for each of the types of creditable service set forth in~~
7 ~~s. 40.23 (2m) (e) on the date the participant attains 5, 10, 15 or 20 years of creditable~~
8 ~~service.~~

9 **SECTION 8.** 40.02 (17) (intro.) of the statutes is amended to read:

10 40.02 (17) (intro.) "Creditable service" means the creditable current and prior
11 service, expressed in years and fractions of a year to the nearest one-hundredth, for
12 which a participating employee receives or is considered to receive earnings under
13 sub. (22) (e) or (em) and for which contributions have been made as required by s.
14 40.05 (1) and (2) and creditable military service under s. 40.287, service credited
15 under s. 40.285 (2) (b) and service credited under s. 40.29, expressed in years and
16 fractions of years to the nearest one-hundredth. How much service in any annual
17 earnings period is the full-time equivalent of one year of creditable service shall be
18 determined by rule by the department and the rules may provide for differing
19 equivalents for different types of employment. Except as provided under s. 40.285
20 (2) (e) and (f), the amount of creditable service for periods prior to January 1, 1982,
21 shall be the amount for which the participant was eligible under the applicable laws
22 and rules in effect prior to January 1, 1982. No more than one year of creditable
23 service shall be granted for any annual earnings period. Creditable service is
24 determined in the following manner for the following persons:

25 **SECTION 9.** 40.02 (39m) of the statutes is amended to read:

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1 40.02 (39m) "Internal revenue code" means the federal internal revenue code
2 under Title 26, USC, as defined for the current taxable year under s. 71.01 (6)
3 amended, and applicable federal regulations adopted under the internal revenue
4 code by the federal department of the treasury, including temporary regulations.

5 / **SECTION 10.** 40.02 (48m) (f) of the statutes is amended to read:

6 40.02 (48m) (f) The judgment, decree or order requires the participant to
7 certify, in a form prescribed by the department, all of the participant's active military
8 service, as described in ~~sub. (15)~~ s. 40.287 (1) (a).

9 / **SECTION 11.** 40.02 (53m) of the statutes is created to read:

10 40.02 (53m) "Service in the uniformed services" has the meaning given in 38
11 USC 4303 (13) and regulations adopted thereunder.

12 / **SECTION 12.** 40.02 (55r) of the statutes is created to read:

13 40.02 (55r) "Uniformed services" has the meaning given in 38 USC 4303 (16)
14 and regulations adopted thereunder.

15 / **SECTION 13.** 40.03 (6) (i) of the statutes is amended to read:

16 40.03 (6) (i) ~~May~~ Shall accept timely appeals of determinations made by the
17 department affecting any right or benefit under any group insurance plan provided
18 for under this chapter.

History: 1981 c. 96 ss. 24, 32; 1981 c. 386; 1983 a. 247; 1985 a. 29; 1985 a. 332 ss. 53, 251 (1); 1987 a. 356; 1989 a. 31, 166, 323; 1991 a. 116, 141, 152, 269; 1993 a. 16; 1995 a. 302, 414; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 153.

19 / **SECTION 14.** 40.05 (2) (b) of the statutes is amended to read:

20 40.05 (2) (b) Contributions shall be made by each participating employer for
21 unfunded prior service liability in a percentage of the earnings of each participating
22 employee. A separate percentage rate shall be determined for the employee
23 occupational categories under s. 40.23 (2m) as of the employer's effective date of
24 participation. The rates shall be sufficient to amortize as a level percent of payroll

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1 over a period of ~~40~~ 30 years from the later of that date or January 1, 1986, the
2 unfunded prior service liability for the categories of employees of each employer
3 determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior
4 service granted on or after January 1, 1986, increased to reflect the effect of 1983
5 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986,
6 by interest at the assumed rate on the unpaid balance at the end of the year and
7 adjusted under pars. (bu), (bv) and (bw).

8 **SECTION 15.** 40.05 (2) (bu) of the statutes is amended to read:

9 40.05 (2) (bu) The employer contribution rate determined under par. (b) for
10 each employer shall be adjusted, if necessary, to reflect the added prior service
11 liability of paying additional joint and survivor death benefits to beneficiaries of
12 participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be
13 sufficient to amortize the unfunded prior service liability of the employers over the
14 remainder of the 40-year amortization period under ~~par. (b) s. 40.05 (2) (b), 2005~~
15 stats.

16 **SECTION 16.** 40.05 (2) (bv) of the statutes is amended to read:

17 40.05 (2) (bv) The employer contribution rate determined under par. (b) for
18 participating employees who served in the U.S. maritime service shall be adjusted
19 to reflect the cost of granting creditable service under s. ~~40.02 (15)~~ 40.287 (1) (a) 7.
20 and that rate shall be sufficient to amortize the unfunded prior service liability of the
21 employers over the remainder of the 40-year amortization period under ~~par. (b) s.~~
22 40.05 (2) (b), 2005 stats.

23 **SECTION 17.** 40.05 (2) (bw) of the statutes is amended to read:

24 40.05 (2) (bw) The employer contribution rate determined under par. (b) for the
25 University of Wisconsin System shall be adjusted to reflect the cost of granting

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1 creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize
2 the unfunded prior service liability of the employers over the remainder of the
3 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005 stats.

4 **SECTION 18.** 40.05 (2) (bz) of the statutes is amended to read:

5 40.05 (2) (bz) The employer contribution rate determined under par. (b) for the
6 department of administration shall be adjusted to reflect the cost of granting
7 creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize
8 the unfunded prior service liability of the department of administration over the
9 remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005
10 stats.

11 **SECTION 19.** 40.08 (1) of the statutes is amended to read:

12 40.08 (1) EXEMPTIONS. The benefits payable to, or other rights and interests of,
13 any member, beneficiary or distributee of any estate under any of the benefit plans
14 administered by the department, including insurance payments, shall be exempt
15 from any tax levied by the state or any subdivision of the state and shall not be
16 assignable, either in law or equity, or be subject to execution, levy, attachment,
17 garnishment or other legal process except as specifically provided in this section;
18 ~~except that, notwithstanding s. 40.01 (2), the department of revenue may attach~~
19 ~~benefit payments to satisfy delinquent tax obligations. The board and any member~~
20 ~~or agent thereof and the department and any employee or agent thereof are immune~~
21 ~~from civil liability for any act or omission while performing official duties relating to~~
22 ~~withholding any annuity payment under this subsection.~~ The exemption from
23 taxation under this section shall not apply with respect to any tax on income.

24 **SECTION 20.** 40.08 (1r) of the statutes is created to read:

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1 40.08 (1r) DELINQUENT STATE TAX OBLIGATIONS. Notwithstanding sub. (1) and s.
2 40.01 (2), the department of revenue may attach any lump sum payment or monthly
3 annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 to satisfy delinquent tax
4 obligations. The board and any member or agent thereof and the department and
5 any employee or agent thereof are immune from civil liability for any act or omission
6 while performing official duties relating to withholding any payment under this
7 subsection.

8 / **SECTION 21.** 40.08 (3) of the statutes is amended to read: X

9 40.08 (3) WAIVERS. Any participant, beneficiary, or distributee of any estate
10 may waive, absolutely and without right of reconsideration or recovery, the right to
11 or the payment of all or any portion of any benefit payable or to become payable under
12 this chapter. The waiver shall be effective ~~on the first day of the 2nd month~~
13 ~~commencing 30 days~~ after it is received by the department or on the date specified
14 in the waiver, if later earlier. The waiver may be cancelled by the participant,
15 beneficiary, or distributee in writing before the effective date.

History: 1981 c. 96, 391; 1983 a. 290; 1985 a. 182 s. 57; 1987 a. 309; 1989 a. 31, 218; 1991 a. 141, 152; 1995 a. 302, 414; 1997 a. 35, 110, 125, 191, 237; 1999 a. 162; 2001 a. 61; 2003 a. 320; 2005 a. 153, 387; 2005 a. 443 s. 265.

16 / **SECTION 22.** 40.08 (4) of the statutes is amended to read: X

17 40.08 (4) RETENTION OF PAYMENTS. Unless voluntarily repaid and except as
18 limited by sub. (10), the department may retain out of any annuity or benefit an
19 amount as the department in its discretion may determine, for the purpose of
20 reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25
21 (5) or for any money paid, plus interest at the ~~effective rate of the core annuity~~
22 ~~division assumed rate, unless the department sets a different rate by rule,~~ to any
23 person or estate, through misrepresentation, fraud, or error. Upon the request of the
24 department any employer shall withhold from any sum payable by the employer to

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1 any person or estate and remit to the department any amount, plus interest at the
 2 ~~effective rate of the core annuity division assumed rate, unless the department sets~~
 3 ~~a different rate by rule, which the department paid to the person or estate through~~
 4 ~~misrepresentation, fraud, or error. Any amount, plus interest at the effective rate~~
 5 ~~assumed rate, unless the department sets a different rate by rule, not recovered by~~
 6 the department from the employer may be procured by the department by action
 7 brought against the person or estate.

History: 1981 c. 96, 391; 1983 a. 290; 1985 a. 182 s. 57; 1987 a. 309; 1989 a. 31, 218; 1991 a. 141, 152; 1995 a. 302, 414; 1997 a. 35, 110, 125, 191, 237; 1999 a. 162; 2001 a. 61; 2003 a. 320; 2005 a. 153, 387; 2005 a. 443 s. 265.

8 **SECTION 23.** 40.08 (6) (e) of the statutes is repealed and recreated to read:

9 40.08 (6) (e) In accordance with rules promulgated by the department, and at
 10 the rate of interest established by rule, the department may credit interest on
 11 moneys refunded or credited under this subsection.

12 **SECTION 24.** 40.08 (8) (a) (intro.) of the statutes is amended to read:

13 40.08 (8) (a) (intro.) ~~Benefits provided under this chapter~~ Except as otherwise
 14 provided in s. 40.02 (8) (b) or 40.74 (6) or (7) or a contract or rule governing the benefit
 15 plan, benefits provided under the Wisconsin Retirement System and upon the death
 16 of a person under s. 40.65 (7) or the deferred compensation plan shall be considered
 17 abandoned as follows:

18 **SECTION 25.** 40.23 (2m) (em) 1. c. of the statutes is amended to read:

19 40.23 (2m) (em) 1. c. Any creditable military service received under s. 40.02 (15)
 20 ~~(e) 40.287 (3)~~, which is based on creditable service performed before January 1, 2000,
 21 shall be considered to have been performed before January 1, 2000.

22 **SECTION 26.** 40.23 (2m) (fm) of the statutes is amended to read:

23 40.23 (2m) (fm) Notwithstanding s. 40.02 (17) (intro.), for purposes of
 24 determining creditable service under par. (f) 2., participants with at least 0.75 of a

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1 year of creditable service in any annual earnings period shall be treated as having
2 one year of creditable service for that annual earnings period. To be eligible for the
3 treatment provided by this paragraph, the participant must have earned only a
4 partial year of creditable service in at least 5 of the 10 annual earnings periods
5 immediately preceding the annual earnings period in which the participant
6 terminated covered employment, and the participant must notify the department of
7 the applicability of this paragraph to the participant's service. The participant is not
8 eligible for the treatment provided by this paragraph if such notification is provided
9 by the participant later than 60 days after the participant's annuity effective date.

10 This paragraph does not apply to service credited under s. 40.02(15) 40.287 (1) or (3)
11 or to creditable service as a teacher.

12 SECTION 27. 40.24 (1) (e) of the statutes is amended to read:

13 40.24 (1) (e) A reduced annuity payable in the normal form or any of the
14 optional life forms provided under this section, plus a temporary annuity payable
15 monthly but terminating with the payment payable in the month following the
16 month in which the annuitant attains age 62 ~~or, if earlier, on the death of the~~
17 ~~annuitant.~~ If the annuitant dies before the end of the final payment, the remaining
18 payments of temporary annuity certain shall be made in accordance with s. 40.73 (2)
19 to the annuitant's beneficiary. It is the intent of this option that so far as is
20 practicable the amounts of the life annuity and temporary annuity shall be
21 determined so that the annuitant's total anticipated benefits from the fund and from
22 his or her primary OASDHI benefit will be the same each month both before and after
23 attainment of age 62.

24 SECTION 28. 40.25 (5) (b) of the statutes is amended to read:

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1 40.25 (5) (b) The full amount of the benefit paid, plus interest at the effective
 2 rate assumed rate, unless the department sets a different rate by rule, shall be repaid
 3 to the Wisconsin retirement system by the employer of an employee whose rights and
 4 creditable service are reestablished under par. (a) within 60 days after the effective
 5 date of the employee's reinstatement. The amount repaid by the employer under this
 6 paragraph shall be deducted by the employer from any payment due the employee
 7 as a result of the resolution of the appeal or, if that amount is insufficient, the balance
 8 shall be deducted from the employee's earnings except the amount deducted from
 9 each earnings payment shall be not less than 10% nor more than 25% of the earnings
 10 payment. If the employee terminates employment the employer shall notify the
 11 department of the amount not yet repaid, including any interest due, at the same
 12 time it notifies the department of the termination of employment, and the
 13 department shall repay to the employer the balance of the amount due from
 14 retentions made under s. 40.08 (4). The employer may charge interest at a rate not
 15 in excess of the current year's assumed rate on any amount unpaid at the end of any
 16 calendar year after the year of reinstatement.

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; 1999 a. 32; 2003 a. 33.

17 / **SECTION 29.** 40.287 (title) of the statutes is created to read:

18 **40.287 (title) Creditable military service.**

19 / **SECTION 30.** 40.287 (1) (title) of the statutes is created to read:

20 40.287 (1) (title) CREDIT FOR MILITARY SERVICE WITHOUT CONTRIBUTIONS.

21 / **SECTION 31.** 40.287 (1) (a) 8. of the statutes is created to read:

22 40.287 (1) (a) 8. This subsection does not apply if the person ceased to be a
 23 participant by taking a benefit under s. 40.25 (2) between the dates the person left
 24 participating employment and returned to participating employment described in

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1 subds. 2. and 3. Failure to qualify for creditable military service under this
2 subsection does not affect a person's eligibility under sub. (2).

3 / SECTION 32. 40.287 (2) of the statutes is created to read:

4 40.287 (2) FEDERAL VETERANS REEMPLOYMENT PENSION RIGHTS. (a) *Employee*
5 *election and effects.* An employee who returned to employment with a participating
6 employer after service in the uniformed services and who, upon that reemployment,
7 qualified for reemployment rights under 38 USC 4301, et seq., may elect to be treated
8 for Wisconsin Retirement System purposes as if he or she had remained continuously
9 employed by the participating employer throughout the period of service in the
10 uniformed services. If the employee so elects, then all of the following apply:

11 1. 'Employer to report constructive earnings and hours of service.' For each
12 annual earnings period and calendar year during the employee's service in the
13 uniformed services, the employer shall determine the employee's hours of service
14 and earnings during those periods as if the employee had been continuously
15 employed and report those amounts to the department. The employee's earnings
16 shall be determined by reference to what the employee would have earned if he or
17 she had been employed by the employer during the period of uniformed service, as
18 specified in 38 USC 4318 (b) (3) and regulations adopted thereunder, and including
19 all reasonably determinable pay increases that would have occurred.

20 2. 'Department to bill employer for contributions and interest.' Upon receipt
21 of the report under subd. 1., the department shall bill the employer for all required
22 contributions due, plus interest, in the same manner under s. 40.06 (5) as if the
23 contributions were due for previously unreported earnings in each year of the
24 employee's service in the uniformed services. The billing shall state the amount of
25 contributions the employee would ordinarily be required to pay. The employer shall

④ Sec. #. CR; 40.287(1)(b)(title) ⑤
④ 40.287(1)(b)(title) Constructive category of employment.

BILL

1 pay the amount billed to the department within 30 days. The department may collect
2 additional interest if there is a delay in payment.

3 3. 'Employer may collect required contributions from employee.' The employer
4 may collect from the employee, and retain, the amount of the contributions the
5 employee would have been required to pay if he or she had been continuously
6 employed by the participating employer during the period of service in the uniformed
7 services. The employer shall treat the employee as if he or she had been continuously
8 employed and extend the benefit of any applicable agreement under which the
9 employer would have paid all or part of the employee's required contributions during
10 that period. The employee may not be required or permitted to pay any interest on
11 the required contributions, in accordance with 29 CFR 1002.263.

12 4. 'Employee payments deadline.' The employee's payment of required
13 contributions must be completed by the earliest of the following:

14 a. Before terminating employment with the post-uniformed service employer.

15 b. The expiration of the time period starting with the date of reemployment and
16 continuing for 3 times the length of the employee's immediate past period of service
17 in the uniformed services.

18 c. The date 5 years after the date of initial post-uniformed service
19 reemployment.

20 5. 'Treatment of employee partial payment.' If the employee fails to pay all
21 required contributions associated with the period of service in the uniformed service
22 before leaving employment with the post-uniformed service employer or within the
23 time period specified in subd. 4., the department may not accept any further
24 payments and shall prorate the creditable service granted under this subsection.

25 The employer is entitled to a credit for contributions and interest paid on the

BILL

1 earnings for which the employee did not pay his or her required contributions. The
2 department shall, by rule, provide how to attribute the contributions actually paid
3 by the employee and how to calculate the credit due the employer.

4 6. 'Creditable service.' Upon receipt of the contributions due on earnings, the
5 department shall grant the employee creditable service for any period of service in
6 the uniformed services not already granted under sub. (1) based on the hours
7 reported by the employer under subd. 1. In the event of a partial payment of
8 contributions due from the employee, any creditable service granted under sub. (1)
9 is not subject to proration.

10 (b) *Time period for making election.* For employees who return to employment
11 with a participating employer after service in the uniformed services on or after the
12 effective date of this paragraph [revisor inserts date], the election described in par.

13 (a) (intro.) may not be made after the time limit for paying required contributions
14 specified in par. (a) 4. has expired.

15 (c) *When repayment of previous lump sum payment required.* If the employee
16 took a lump sum benefit under s. 40.25 after leaving participating employment to
17 begin service in the uniformed services and chooses to exercise any rights under par.
18 (a), the employee must repay to the department the lump sum benefit. The
19 repayment due is the lesser of the following:

20 1. The amount of the lump sum payment plus interest at the effective rate of
21 the core division, beginning with the rate for the year in which the payment was
22 made.

23 2. The amount of the difference between the current balance of the employee's
24 required contribution accumulations in the core and variable retirement investment

BILL

1 trusts and what that balance would have been if the funds had not been withdrawn,
2 including the effects of any interest that would have accrued but for the withdrawal.

3 **SECTION 33.** 40.65 (3) of the statutes is amended to read:

4 40.65 (3) The Wisconsin retirement board shall determine the amount of each
5 monthly benefit payable under this section and its effective date. The board shall
6 periodically review the dollar amount of each monthly benefit and adjust it to
7 conform with the provisions of this section. The board may request any income or
8 benefit information, or any information concerning a person's marital status, which
9 it considers to be necessary to implement this subsection and shall may require a
10 participant to submit a certified copy of his or her most recent state or federal income
11 tax return. The board may terminate the monthly benefit of any person who refuses
12 to submit information requested by the board or who submits false information to the
13 board.

14 **SECTION 34.** 40.70 (1) (b) of the statutes is amended to read:

15 40.70 (1) (b) The employee files ~~with the department~~ an application in the
16 manner provided by rule or contract, to be effective on a date fixed by the department,
17 for one or more of the types of coverage established under this subchapter. The group
18 insurance board may provide a different method of enrollment than provided under
19 this subsection.

20 **SECTION 35.** 40.70 (6) of the statutes is amended to read:

21 40.70 (6) Except as provided in sub. (7m), any employee who has not applied
22 for coverage under sub. (1) within ~~6 months~~ the time period specified by rule or
23 contract after becoming eligible for coverage or any employee whose insurance
24 terminates under sub. (8) shall not thereafter become insured for that coverage
25 unless ~~prior to the attainment of age 55~~ the employee furnishes evidence of

BILL

1 insurability satisfactory to the insurer, at his or her own expense. If the evidence is
2 approved, the employee shall become insured on the first day of the first month
3 beginning after the approval.

4 **SECTION 36.** 40.73 (3) (e) of the statutes is amended to read:

5 40.73 (3) (e) Any beneficiary who is eligible to receive a beneficiary annuity
6 may elect to receive the annuity in any of the optional annuity forms provided for
7 retirement annuities, other than as an annuity under s. 40.24 (1) (c) or any annuity
8 payable over the joint life expectancies of the beneficiary and another person. The
9 number of guaranteed monthly payments available to a beneficiary may not exceed
10 the life expectancy of the beneficiary.

History: 1981 c. 96; 1983 a. 141, 290; 1987 a. 309; 1989 a. 110, 166; 1995 a. 302, 414; 1997 a. 58; 1999 a. 11, 12; 2005 a. 154.

11 **SECTION 37.** 40.74 (2) of the statutes is amended to read:

12 40.74 (2) A beneficiary of a deceased participant, annuitant, alternate payee,
13 beneficiary, or employee may waive absolutely and without right of reconsideration
14 or recovery all or part of any benefit payable under this chapter. The beneficiary
15 shall then be determined as if the waiving beneficiary had died prior to the decedent
16 except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2.,
17 payment shall be made as if at least one child had survived the participant, alternate
18 payee, beneficiary, employee, or annuitant. Unless the department receives the
19 beneficiary's written request to cancel the waiver before the date on which it would
20 otherwise become effective, the waiver shall be effective ~~on the first day of the 2nd~~
21 ~~month commencing 30 days~~ after it is received by the department or ^{on} the date
22 specified in the waiver, if later earlier. The waiver may be cancelled by the
23 beneficiary in writing before the effective date. A waiver received after the effective
24 date on which a beneficiary has commenced a monthly annuity under s. 40.73 (2) or

BILL

1 (3) shall apply to monthly payments payable after the effective date of the waiver.

2 Payment shall be subject to the restrictions specified in s. 40.73 (2) (b).

3 History: 1981 c. 96; 1987 a. 309; 2005 a. 151.

SECTION 38. 40.74 (6) of the statutes is created to read:

4 40.74 (6) Any potential primary beneficiary under s. 40.02 (8) who cannot be
5 located by reasonable efforts within 12 months after the later of the ^{date of} death of the
6 participant or the date on which the department determines the person, trust, or
7 estate initially became a potential primary beneficiary may be treated as a
8 beneficiary that predeceased the participant and all other potential beneficiaries.

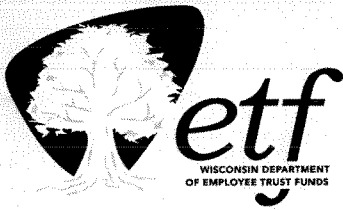
9 **SECTION 39.** 40.74 (7) of the statutes is created to read:

10 40.74 (7) A trust that does not exist on the date of the participant's death or an
11 estate not opened or reopened within 12 months after the department determines the
12 estate initially became a potential primary beneficiary under s. 40.02 (8) may be
13 treated as a beneficiary that predeceased the participant and all other potential
14 beneficiaries.

15 **SECTION 40. Nonstatutory provisions.**

16 (1) DISTRIBUTION OF MONEYS FROM RESERVE ESTABLISHED UNDER 1999 WISCONSIN
17 ACT 11. Notwithstanding the requirement under 1999 Wisconsin Act 11, section 27
18 (1) (b), that the employee trust funds board make deductions on a monthly basis from
19 employers' credit balances, the board shall distribute all remaining moneys in the
20 reserve established under 1999 Wisconsin Act 11, section 27 (1) (b), before January
21 1, 2009.

22 **SECTION 41. Initial applicability.**



STATE OF WISCONSIN
Department of Employee Trust Funds
David A. Stella
SECRETARY

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CORRESPONDENCE MEMORANDUM

DATE: October 31, 2007
TO: Rick Champagne, Senior Attorney, LRB
FROM: Bob Conlin, Deputy Secretary
SUBJECT: Request for Modifications to LRB-3211/1, Relating to Various Changes to Ch. 40

Please make the following changes to LRB-3211/1:

1. Page 4, line 1: delete the material beginning on page 4, line 1 and ending on page 5, line 7, and substitute the following:

SECTION 1. 40.02 (8) (a) 2. of the statutes is amended to read:

40.02 **(8)** (a) 2. In the absence of a written designation of beneficiary, or if all designated beneficiaries ~~so designated who survive the decedent~~ die before filing with the department either a beneficiary designation applicable to that death benefit or an application for any death benefit payable, the person determined in the following sequence: group 1, ~~widow or widower~~ surviving spouse; group 2, children ~~if at least one child survives of the deceased~~ participant, employee or annuitant, ~~in which event in equal shares with the share of any deceased child shall be payable to the surviving spouse issue of the child or to the surviving children of the child if there is no spouse, or otherwise and if there is no surviving issue of a deceased child to the other eligible children in this group and, if deceased, their issue;~~ group 3, ~~grandchild;~~ group 4, parent, in equal shares if both survive; group ~~5~~ 4, brother and sister in equal shares and to the issue of any deceased brother or sister. No payment may be made to a person included in any group if there is a living person in any preceding group. The share payable to the issue of a person shall be determined per stirpes as provided in s. 845.04 (1), except that s. 854.04 (6) has no application to determinations under this subsection.

[Depending on how you feel, the LRB analysis on this item could also be rewritten as follows:

5. Under current law, when a person does not provide a written beneficiary designation for death benefits, or none of the designated beneficiaries survive, then there is a statutory sequence of relatives who become the beneficiary by default. This bill eliminates a former son- or daughter-in-law as a potential default beneficiary. At present, no blood relative more distant than a grand-child, parent or sibling may be a default beneficiary. This bill adds great-grandchildren and other descendants of the deceased employee, nieces, nephews and other descendents of the deceased employee's brothers and sisters to the list of default beneficiaries, and specifies how their share of the death benefits is determined.]

2. Page 5, line 8: delete the material beginning on line 8 and ending on line 19 and substitute the following:

"SECTION 2. 40.02 (8) (b) of the statutes is renumbered 40.02 (8) (b) (intro.)."

3. Page 8, line 2, after that line insert:

"SECTION 7m. 40.02 (22) (e) is amended to read:

40.02 (22) (e) Except for OASDHI purposes, means an employee's compensation determined as required by 38 USC 4318(b)(3) and regulations adopted thereunder deemed to have been paid for services deemed to have been rendered while serving in a position covered under, and meeting the requirements of, 38 USC 4301, et seq., at the employee's rate of pay prior to beginning such service, provided contributions and premiums on the deemed earnings are paid as required under s. 40.05 or 40.287. This paragraph applies only with respect to an employee serving in a position covered under, and meeting the requirements of, 38 USC 4301, et seq."

4. Page 12, line 12: delete the material beginning on that line and ending on line 17.

5. Page 13, line 17: after "of" insert "the".

6. Page 14, line 21: delete "(2)".

7. Page 14, line 23: delete "quality" and substitute "qualify".

8. Page 15, line 2: delete the material beginning on line and ending on page 16, line 2, and substitute the following:

40.287 (2) FEDERAL VETERANS REEMPLOYMENT PENSION RIGHTS. (a) *Employee election and effects.* An employee who returned to employment with a participating employer after service in the uniformed services and who, upon that reemployment, qualified for reemployment rights under 38 USC 4301, et seq., may elect to be treated for Wisconsin Retirement System purposes as if he or she had remained continuously employed by the participating employer throughout the period of service in the uniformed services. If the employee so elects, then all of the following apply:

1. 'Employer to report constructive earnings and hours of service.' For each annual earnings period and calendar year during the employee's service in the

uniformed services, the employer shall determine the employee's hours of service and earnings during those periods as if the employee had been continuously employed and report those amounts to the department. The employee's earnings shall be the employee's compensation determined as required by 38 USC 4318(b)(3) and regulations adopted thereunder.

2. 'Employer to pay.' The employer shall pay all required contributions due on the employee's compensation determined as required by 38 USC 4318(b)(3) and regulations adopted thereunder, in the manner specified under s. 40.06 (5), including interest, as if the contributions were due for previously unreported earnings in each year of the employee's service in the uniformed services.

9. Page 17, line 20: delete "effective" and substitute "assumed".

10. Page 18, line 10: delete that line and substitute "participant to authorize the board to obtain a to submit a certified copy of his or her most recent state or federal income".

11. Page 18, line 12: after "board" insert ", who refuses to authorize the board to obtain a copy of his or her most recent tax return,".

12. Page 20, line 14: after that line insert the following:

SECTION __. 40.80 (2r) (b) is renumbered 40.08 (1r) and as renumbered is amended to read:

40.08 (1r) *DIVISION OF DEFERRED COMPENSATION BENEFITS.* Notwithstanding ~~s. 40.08 sub.~~ (1), a participant's accumulated assets held in an account in the deferred compensation plan established under this subchapter VII may be divided, in the manner provided by the deferred compensation board and s. 40.80 (2r), pursuant to a domestic relations order as defined by s. 40.80 (2r) (a).

13. Page 21, line 3: after "on" insert "or after".

Champagne, Rick

From: Conlin, Bob - ETF
Sent: Thursday, November 01, 2007 6:46 PM
To: Champagne, Rick
Subject: Request for Revisions to LRB 3211/1

Attachments: RemedialLegislationRevisionRequest.doc



RemedialLegislation
RevisionReq...

Rick:

As promised, the attached memo makes several requests for modifications to LRB 3211/1, ETF's proposed "technical" legislation. I think you can figure it out, but my drafting skills, if I ever had any, are getting rusty so I apologize in advance. I'll be out of town through next Wednesday (11/7) but will have access to email or you can reach me on my cell at 608-345-5492.

Unfortunately, this may not be the last request for modifications.

<<RemedialLegislationRevisionRequest.doc>>
Bob

Bob Conlin, Deputy Secretary
Wisconsin Dept. of Employee Trust Funds
(608)261-7940

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D-Nate
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3211/1

RAC:all:jf

2
2

SOON

2007 BILL

RMR
stays

SA ✓

-regm. cat.

1 AN ACT *to renumber* 40.02 (15) (b); *to renumber and amend* 40.02 (8) (b), 40.02
2 (15) (a) and 40.02 (15) (c); *to amend* 40.02 (8) (a) 2., 40.02 (17) (intro.), 40.02
3 (39m), 40.02 (48m) (f), 40.03 (6) (i), 40.05 (2) (b), 40.05 (2) (bu), 40.05 (2) (bv),
4 40.05 (2) (bw), 40.05 (2) (bz), 40.08 (1), 40.08 (3), 40.08 (4), 40.08 (8) (a) (intro.),
5 40.23 (2m) (em) 1. c., 40.23 (2m) (fm), 40.24 (1) (e), 40.25 (5) (b), 40.65 (3), 40.70
6 (1) (b), 40.70 (6), 40.73 (3) (e) and 40.74 (2); *to repeal and recreate* 40.08 (6)
7 (e); and *to create* 40.02 (8) (b) 2., 40.02 (53m), 40.02 (55r), 40.08 (1r), 40.287
8 (title), 40.287 (1) (title), 40.287 (1) (a) 8., 40.287 (1) (b) (title), 40.287 (2), 40.74
9 (6) and 40.74 (7) of the statutes; **relating to:** creditable military service under
10 the Wisconsin Retirement System; distribution of moneys to Wisconsin
11 Retirement System employers under 1999 Wisconsin Act 11; payment of
12 interest by the Department of Employee Trust Funds on credited or refunded
13 moneys; Wisconsin Retirement System beneficiary standard sequence;
14 accelerated death benefit option continuation under the Wisconsin Retirement

BILL

1 System; life insurance benefits administered by the Department of Employee
2 Trust Funds; definition of the term Internal Revenue Code for purposes of
3 benefit plans administered by the Department of Employee Trust Funds;
4 interest rates charged on moneys owed the Department of Employee Trust
5 Funds for benefit programs; payment of death benefits under the Wisconsin
6 Retirement System; authority of the Group Insurance Board; eligibility
7 requirements for duty disability benefit under the Wisconsin Retirement
8 System; amortization period for unfunded prior service liability under the
9 Wisconsin Retirement System; attachment of retirement benefits for
10 delinquent state tax purposes; waiver of benefits under the Wisconsin
11 Retirement System; and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes with respect to the operation and administration of the Wisconsin retirement System (WRS):

1. Currently, the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that, for pension plan purposes, returning uniformed services members, upon reemployment by their former employer, must be treated as if they had been continuously employed by their employer during their period in the uniformed services. Federal law defines the "uniformed services" to mean "the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designed by the president in time of war or national emergency." This bill conforms the WRS to USERRA, permitting returning uniformed services members to receive WRS creditable service for their uniformed service.

2. Under the WRS, a participant who has military service before 1974 may receive up to one, two, three, or four years of military service credit under the WRS if the participant has at least five, ten, fifteen, or twenty years, respectively, of creditable service. This bill provides that the creditable military service is to be prorated in the time of retirement based on the participant's different types of creditable service under the WRS.

3. 1999 Wisconsin Act 11 requires the Employee Trust Funds Board to distribute \$200,000,000 to covered employers in the form of credit balances that

BILL

could be used to offset employer contributions owed to the WRS. This bill requires that the board complete the distribution before January 1, 2009.

4. Current law prohibits the Department of Employee Trust Funds (DETF) from paying interest on moneys paid in error. The bill allows DETF to pay the interest in accordance with its rules and at a rate of interest established by rule.

5. Under the WRS, for the payment of a death benefit, if there is no designated beneficiary, DETF pays the benefit to the following individuals in the following order: the widow or widower; the children or the children's spouses if the children are deceased; the grandchildren; parents; and brothers and sisters. This bill eliminates the spouses of children who are deceased from being in line to receive the death benefit.

6. Current law allows a WRS annuitant to select an annuity option that pays the annuitant a temporary additional annuity until the end of the month in which the annuitant attains age 62 or dies, whichever occurs first. When the annuitant reaches age 62, the subsequent annuity payments are reduced to fund the cost of the temporary additional annuity that he or she received before attaining age 62. This bill eliminates the requirement that the temporary additional annuity must end at the annuitant's death if the annuitant dies before attaining age 62, instead permitting a beneficiary to continue receiving the temporary additional annuity until the month after the month in which the annuitant would have attained age 62.

7. Under current law, to be insured under the group life insurance plan administered by DETF, an eligible employee must file an application with DETF. This bill requires that the application be filed in the manner provided by rule or contract. In addition, the bill also eliminates a requirement that an eligible employee who did not apply for life insurance when initially eligible cannot apply for that life insurance once he or she reaches the age of 55.

8. Currently, under the WRS, retirement benefits that are payable as the result of the death of a WRS participant are not considered to be abandoned until at least ten years have elapsed. This bill provides that the abandonment provisions for retirement benefits are intended to apply to all WRS benefits and benefits under the deferred compensation plan. The bill also specifies when the potential beneficiary of a deceased person, who was insured under the group life insurance program, is treated as having abandoned any claim to the life insurance benefits. ~~Finally, the bill eliminates a current law provision that allows a person to be considered a WRS beneficiary by filing a beneficiary designation without actually applying for the death benefit.~~

9. For the purpose of benefit plans administered by DETF, the bill provides that the definition of the federal "Internal Revenue Code" is delegated to the federal government and not, as is current law, to enactments of the Wisconsin legislature.

10. Current law provides that for certain moneys owed under public employee benefit plans, DETF may retain the moneys from payments due any person or estate and may charge interest at the effective rate, which is essentially the most recent annual investment return on moneys in the fixed annuity division of the employee trust fund. This bill changes the rate at which interest can be charged to the assumed

Insert analysis

also

the

BILL

rate, which is the projected actuarial rate that is needed to fund the benefits under the WRS, unless DETF sets another rate by rule.

11. This bill specifies that the number of guaranteed death benefit payments that are payable to a beneficiary of a participant in the WRS may not exceed the life expectancy of the beneficiary.

12. Under current law, the Group Insurance Board is authorized to hear appeals of determinations made by DETF affecting group insurance plans. This bill requires the Group Insurance Board to hear such appeals.

13. The bill eliminates a requirement that a participant must submit a certified copy of his or her most recent state or federal income tax return to the Wisconsin Retirement Board for income verification purposes under the Duty Disability program. Instead, the bill ^{provides that} ~~authorizes, but does not require~~ the Wisconsin Retirement Board ~~to impose such a requirement.~~ ^{may require a participant to authorize}

14. Currently, unfunded prior service liabilities under the WRS are funded over a 40-year amortization period. This bill reduces the amortization period to 30 years for all unfunded prior service liabilities incurred after the bill's effective date.

15. Currently, the Department of Revenue (DOR) may attach WRS benefits for delinquent tax purposes. The bill clarifies that DOR may attach WRS annuity payments, lump sum payments, and disability annuity payments.

16. Current law permits a participant, beneficiary, or distributee of an estate to waive WRS benefits and provides that the waiver is effective on the first day of the 2nd month commencing after the waiver is received by DETF or on the date specified in the waiver, if later. This bill provides that the waiver is effective 30 days after it is received by DETF or on the date specified in the waiver, if earlier. The bill also provides that the waiver may be cancelled by the participant, beneficiary, or distributee in writing before the effective date.

the Wisconsin Retirement Board to obtain a copy of the participant's tax returns

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 40.02 (8) (a) 2. of the statutes is amended to read:
2 ~~40.02 (8) (a) 2.~~ In the absence of a written designation of beneficiary, or if all
3 beneficiaries so designated die before filing with the department an application for
4 any death benefit payable, the person determined in the following sequence: group
5 1, ~~widow or widower~~ surviving spouse; group 2, children if at least one child survives

BILL

1 of the deceased participant, employee or annuitant, ~~in which event~~ with the share
 2 of any deceased child shall be payable to the surviving spouse issue of the child or
 3 to the surviving children of the child if there is no spouse, per stirpes, or otherwise
 4 to the other eligible children in this group or their issue; group 3, grandchild; group
 5 4, parent; group 5 4, brother and sister and to the issue of any deceased brother or
 6 sister, per stirpes. No payment may be made to a person included in any group if
 7 there is a living person in any preceding group.

Insert 8-8

8 **SECTION 2.** 40.02 (8) (b) of the statutes is renumbered 40.02 (8) (b) (intro.) and
 9 amended to read:

10 40.02 (8) (b) (intro.) "Beneficiary" does not include ~~a~~ any of the following:

plain

11 1. A person who dies before filing with the department either a beneficiary
 12 designation applicable to that death benefit or an application for any death benefit
 13 payable to the person except as otherwise provided under group 2, under par. (a) 2.

plain

14 If a person dies after filing a beneficiary application but before the date on which the
 15 benefit check, share draft or other draft is issued or funds are otherwise transferred,
 16 any benefit payable shall be paid in accord with the written designation of
 17 beneficiary, if any, filed with the department in connection with the application or,
 18 if none, in accord with the last designation previously filed by the person, or
 19 otherwise to the person's estate.

20 **SECTION 3.** 40.02 (8) (b) 2. of the statutes is created to read:

21 40.02 (8) (b) 2. For purposes of a group life insurance benefit plan under this
 22 chapter, and at the discretion of the department, an individual who is notified by the
 23 department or insurer that a benefit is payable to the individual because of the death
 24 of an insured person, who is provided with any necessary application form, and who

BILL

1 does not then apply for the benefit within 12 months of the date of notification by the
2 department that the benefit is payable to the individual.

3 **SECTION 4.** 40.02 (15) (a) of the statutes is renumbered 40.287 (1) (a), and
4 40.287 (1) (a) (intro.), as renumbered, is amended to read:

5 40.287 (1) (a) Criteria. (intro.) "~~Creditable military service~~" means A
6 participant who returns to participating employment after a period of active service
7 in the U.S. armed forces shall be granted creditable service in the Wisconsin
8 Retirement System, based on the total period of service in the U.S. armed forces,
9 provided:

10 **SECTION 5.** 40.02 (15) (b) of the statutes is renumbered 40.287 (1) (b).

11 **SECTION 6.** 40.02 (15) (c) of the statutes is renumbered 40.287 (3), and 40.287
12 (3) (intro.), (a), (b), (c) and (d), as renumbered, are amended to read:

13 40.287 (3) PRORATED CREDIT FOR CERTAIN OTHER MILITARY SERVICE. (intro.)
14 Notwithstanding ~~sub. (17) (intro.)~~ subs. (1) and (2) and any other law, any person who
15 is credited with 5, 10, 15, or 20 or more years of creditable service, not counting any
16 previously granted creditable military service, may receive creditable military
17 service at the time of retirement for not more than 1, 2, 3, or 4 years, respectively, of
18 active service which that meets the standards standard under ~~par. sub. (1) (a) 5.~~,
19 provided:

20 (a) This ~~paragraph subsection~~ applies only to active military service served
21 prior to January 1, 1974.

22 (b) Any creditable military service otherwise granted shall be included in
23 determining the maximum years to be granted under this ~~paragraph subsection~~.

24 (c) Creditable military service under this ~~paragraph subsection~~ shall be
25 allocated prorated at the time of retirement in proportion to the amount of the

BILL

1 participant's creditable service for each of the types of creditable service set forth in
2 s. 40.23 (2m) (e) ~~on the date the participant attains 5, 10, 15 or 20 years of creditable~~
3 service.

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

11 **SECTION 7.** 40.02 (17) (intro.) of the statutes is amended to read:

12 40.02 (17) (intro.) "Creditable service" means the creditable current and prior
13 service, expressed in years and fractions of a year to the nearest one-hundredth, for
14 which a participating employee receives or is considered to receive earnings under
15 sub. (22) (e) or (em) and for which contributions have been made as required by s.
16 40.05 (1) and (2) and creditable military service under s. 40.287, service credited
17 under s. 40.285 (2) (b) and service credited under s. 40.29, expressed in years and
18 fractions of years to the nearest one-hundredth. How much service in any annual
19 earnings period is the full-time equivalent of one year of creditable service shall be
20 determined by rule by the department and the rules may provide for differing
21 equivalents for different types of employment. Except as provided under s. 40.285
22 (2) (e) and (f), the amount of creditable service for periods prior to January 1, 1982,
23 shall be the amount for which the participant was eligible under the applicable laws
24 and rules in effect prior to January 1, 1982. No more than one year of creditable

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1 service shall be granted for any annual earnings period. Creditable service is
2 determined in the following manner for the following persons:

3 **SECTION 8.** 40.02 (39m) of the statutes is amended to read:

4 40.02 (39m) "Internal revenue code" means the federal internal revenue code
5 under Title 26, USC, as defined for the current taxable year under s. 71.01 (6)
6 amended, and applicable federal regulations adopted under the internal revenue
7 code by the federal department of the treasury, including temporary regulations.

8 **SECTION 9.** 40.02 (48m) (f) of the statutes is amended to read:

9 40.02 (48m) (f) The judgment, decree or order requires the participant to
10 certify, in a form prescribed by the department, all of the participant's active military
11 service, as described in ~~sub. (15)~~ s. 40.287 (1) (a).

12 **SECTION 10.** 40.02 (53m) of the statutes is created to read:

13 40.02 (53m) "Service in the uniformed services" has the meaning given in 38
14 USC 4303 (13) and regulations adopted thereunder.

15 **SECTION 11.** 40.02 (55r) of the statutes is created to read:

16 40.02 (55r) "Uniformed services" has the meaning given in 38 USC 4303 (16)
17 and regulations adopted thereunder.

18 **SECTION 12.** 40.03 (6) (i) of the statutes is amended to read:

19 40.03 (6) (i) ~~May~~ Shall accept timely appeals of determinations made by the
20 department affecting any right or benefit under any group insurance plan provided
21 for under this chapter.

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

23 40.05 (2) (b) Contributions shall be made by each participating employer for
24 unfunded prior service liability in a percentage of the earnings of each participating
25 employee. A separate percentage rate shall be determined for the employee

Insert 8-3

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1 occupational categories under s. 40.23 (2m) as of the employer's effective date of
2 participation. The rates shall be sufficient to amortize as a level percent of payroll
3 over a period of 40 30 years from the later of that date or January 1, 1986, the
4 unfunded prior service liability for the categories of employees of each employer
5 determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior
6 service granted on or after January 1, 1986, increased to reflect the effect of 1983
7 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986,
8 by interest at the assumed rate on the unpaid balance at the end of the year and
9 adjusted under pars. (bu), (bv) and (bw).

10 **SECTION 14.** 40.05 (2) (bu) of the statutes is amended to read:

11 40.05 (2) (bu) The employer contribution rate determined under par. (b) for
12 each employer shall be adjusted, if necessary, to reflect the added prior service
13 liability of paying additional joint and survivor death benefits to beneficiaries of
14 participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be
15 sufficient to amortize the unfunded prior service liability of the employers over the
16 remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005
17 stats.

18 **SECTION 15.** 40.05 (2) (bv) of the statutes is amended to read:

19 40.05 (2) (bv) The employer contribution rate determined under par. (b) for
20 participating employees who served in the U.S. maritime service shall be adjusted
21 to reflect the cost of granting creditable service under s. ~~40.02 (15)~~ 40.287 (1) (a) 7.
22 and that rate shall be sufficient to amortize the unfunded prior service liability of the
23 employers over the remainder of the 40-year amortization period under ~~par. (b)~~ s.
24 40.05 (2) (b), 2005 stats.

25 **SECTION 16.** 40.05 (2) (bw) of the statutes is amended to read:

BILL**SECTION 16**

1 40.05 (2) (bw) The employer contribution rate determined under par. (b) for the
2 University of Wisconsin System shall be adjusted to reflect the cost of granting
3 creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize
4 the unfunded prior service liability of the employers over the remainder of the
5 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005 stats.

6 **SECTION 17.** 40.05 (2) (bz) of the statutes is amended to read:

7 40.05 (2) (bz) The employer contribution rate determined under par. (b) for the
8 department of administration shall be adjusted to reflect the cost of granting
9 creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize
10 the unfunded prior service liability of the department of administration over the
11 remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005
12 stats.

13 **SECTION 18.** 40.08 (1) of the statutes is amended to read:

14 40.08 (1) EXEMPTIONS. The benefits payable to, or other rights and interests of,
15 any member, beneficiary or distributee of any estate under any of the benefit plans
16 administered by the department, including insurance payments, shall be exempt
17 from any tax levied by the state or any subdivision of the state and shall not be
18 assignable, either in law or equity, or be subject to execution, levy, attachment,
19 garnishment or other legal process except as specifically provided in this section;
20 ~~except that, notwithstanding s. 40.01 (2), the department of revenue may attach~~
21 ~~benefit payments to satisfy delinquent tax obligations. The board and any member~~
22 ~~or agent thereof and the department and any employee or agent thereof are immune~~
23 ~~from civil liability for any act or omission while performing official duties relating to~~
24 ~~withholding any annuity payment under this subsection. The exemption from~~
25 ~~taxation under this section shall not apply with respect to any tax on income.~~

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1 **SECTION 19.** 40.08 (1r) of the statutes is created to read:

2 40.08 (1r) DELINQUENT STATE TAX OBLIGATIONS. Notwithstanding sub. (1) and s.
3 40.01 (2), the department of revenue may attach any lump sum payment or monthly
4 annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 to satisfy delinquent tax
5 obligations. The board and any member or agent thereof and the department and
6 any employee or agent thereof are immune from civil liability for any act or omission
7 while performing official duties relating to withholding any payment under this
8 subsection.

9 **SECTION 20.** 40.08 (3) of the statutes is amended to read:

10 40.08 (3) WAIVERS. Any participant, beneficiary, or distributee of any estate
11 may waive, absolutely and without right of reconsideration or recovery, the right to
12 or the payment of all or any portion of any benefit payable or to become payable under
13 this chapter. The waiver shall be effective ~~on the first day of the 2nd month~~
14 ~~commencing~~ 30 days after it is received by the department or on the date specified
15 in the waiver, if later earlier. The waiver may be cancelled by the participant,
16 beneficiary, or distributee in writing before the effective date.

17 **SECTION 21.** 40.08 (4) of the statutes is amended to read:

18 40.08 (4) RETENTION OF PAYMENTS. Unless voluntarily repaid and except as
19 limited by sub. (10), the department may retain out of any annuity or benefit an
20 amount as the department in its discretion may determine, for the purpose of
21 reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25
22 (5) or for any money paid, plus interest at the ~~effective rate of the core annuity~~
23 ~~division~~ assumed rate, unless the department sets a different rate by rule, to any
24 person or estate, through misrepresentation, fraud, or error. Upon the request of the
25 department any employer shall withhold from any sum payable by the employer to

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SECTION 21

1 any person or estate and remit to the department any amount, plus interest at the
2 ~~effective rate of the core annuity division assumed rate, unless the department sets~~
3 ~~a different rate by rule, which the department paid to the person or estate through~~
4 ~~misrepresentation, fraud, or error. Any amount, plus interest at the effective rate~~
5 ~~assumed rate, unless the department sets a different rate by rule, not recovered by~~
6 the department from the employer may be procured by the department by action
7 brought against the person or estate.

8 **SECTION 22.** 40.08 (6) (e) of the statutes is repealed and recreated to read:

9 40.08 (6) (e) In accordance with rules promulgated by the department, and at
10 the rate of interest established by rule, the department may credit interest on
11 moneys refunded or credited under this subsection.

12 **SECTION 23.** 40.08 (8) (a) (intro.) of the statutes is amended to read:

13 ~~40.08 (8) (a) (intro.) Benefits provided under this chapter Except as otherwise
14 provided in s. 40.02 (8) (b) or 40.74 (6) or (7) or a contract or rule governing the benefit
15 plan, benefits provided under the Wisconsin Retirement System and upon the death
16 of a person under s. 40.65 (7) or the deferred compensation plan shall be considered
17 abandoned as follows:~~

18 **SECTION 24.** 40.23 (2m) (em) 1. c. of the statutes is amended to read:

19 40.23 (2m) (em) 1. c. Any creditable military service received under s. 40.02 (15)
20 (e) 40.287 (3), which is based on creditable service performed before January 1, 2000,
21 shall be considered to have been performed before January 1, 2000.

22 **SECTION 25.** 40.23 (2m) (fm) of the statutes is amended to read:

23 40.23 (2m) (fm) Notwithstanding s. 40.02 (17) (intro.), for purposes of
24 determining creditable service under par. (f) 2., participants with at least 0.75 of a
25 year of creditable service in any annual earnings period shall be treated as having

BILL

1 one year of creditable service for that annual earnings period. To be eligible for the
2 treatment provided by this paragraph, the participant must have earned only a
3 partial year of creditable service in at least 5 of the 10 annual earnings periods
4 immediately preceding the annual earnings period in which the participant
5 terminated covered employment, and the participant must notify the department of
6 the applicability of this paragraph to the participant's service. The participant is not
7 eligible for the treatment provided by this paragraph if such notification is provided
8 by the participant later than 60 days after the participant's annuity effective date.
9 This paragraph does not apply to service credited under s. 40.02 (15) 40.287 (1) or (3)
10 or to creditable service as a teacher.

11 **SECTION 26.** 40.24 (1) (e) of the statutes is amended to read:

12 40.24 (1) (e) A reduced annuity payable in the normal form or any of the
13 optional life forms provided under this section, plus a temporary annuity payable
14 monthly but terminating with the payment payable in the month following the
15 month in which the annuitant attains age 62 ~~or, if earlier, on the death of the~~
16 ~~annuitant.~~ If the annuitant dies before the end of the final payment, the remaining
17 payments of ^{the} temporary annuity certain shall be made in accordance with s. 40.73 (2)
18 to the annuitant's beneficiary. It is the intent of this option that so far as is
19 practicable the amounts of the life annuity and temporary annuity shall be
20 determined so that the annuitant's total anticipated benefits from the fund and from
21 his or her primary OASDHI benefit will be the same each month both before and after
22 attainment of age 62.

23 **SECTION 27.** 40.25 (5) (b) of the statutes is amended to read:

24 40.25 (5) (b) The full amount of the benefit paid, plus interest at the effective
25 rate assumed rate, unless the department sets a different rate by rule, shall be repaid

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1 to the Wisconsin retirement system by the employer of an employee whose rights and
 2 creditable service are reestablished under par. (a) within 60 days after the effective
 3 date of the employee's reinstatement. The amount repaid by the employer under this
 4 paragraph shall be deducted by the employer from any payment due the employee
 5 as a result of the resolution of the appeal or, if that amount is insufficient, the balance
 6 shall be deducted from the employee's earnings except the amount deducted from
 7 each earnings payment shall be not less than 10% nor more than 25% of the earnings
 8 payment. If the employee terminates employment the employer shall notify the
 9 department of the amount not yet repaid, including any interest due, at the same
 10 time it notifies the department of the termination of employment, and the
 11 department shall repay to the employer the balance of the amount due from
 12 retentions made under s. 40.08 (4). The employer may charge interest at a rate not
 13 in excess of the current year's assumed rate on any amount unpaid at the end of any
 14 calendar year after the year of reinstatement.

SECTION 28. 40.287 (title) of the statutes is created to read:

40.287 (title) Creditable military service.

SECTION 29. 40.287 (1) (title) of the statutes is created to read:

40.287 (1) (title) CREDIT FOR MILITARY SERVICE WITHOUT CONTRIBUTIONS.

SECTION 30. 40.287 (1) (a) 8. of the statutes is created to read:

20 40.287 (1) (a) 8. This subsection does not apply if the person ceased to be a
 21 participant by taking a benefit under s. 40.25 ~~HA~~ between the dates the person left
 22 participating employment and returned to participating employment described in
 23 subds. 2. and 3. Failure to ~~qualify~~^{qualify} for creditable military service under this
 24 subsection does not affect a person's eligibility under sub. (2).

SECTION 31. 40.287 (1) (b) (title) of the statutes is created to read:

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1 40.287 (1) (b) *Constructive category of employment.*

2 **SECTION 32.** 40.287 (2) of the statutes is created to read:

3 40.287 (2) FEDERAL VETERANS REEMPLOYMENT PENSION RIGHTS. (a) *Employee*
4 *election and effects.* An employee who returned to employment with a participating
5 employer after service in the uniformed services and who, upon that reemployment,
6 qualified for reemployment rights under 38 USC 4301, et seq., may elect to be treated
7 for Wisconsin Retirement System purposes as if he or she had remained continuously
8 employed by the participating employer throughout the period of service in the
9 uniformed services. If the employee so elects, then all of the following apply:

10 1. 'Employer to report constructive earnings and hours of service.' For each
11 annual earnings period and calendar year during the employee's service in the
12 uniformed services, the employer shall determine the employee's hours of service
13 and earnings during those periods as if the employee had been continuously
14 employed and report those amounts to the department. The employee's earnings
15 shall be ^{the employee's compensation} determined by reference to what the employee would have earned if he or
16 ~~she had been employed by the employer during the period of uniformed service,~~ as
17 ~~specified in~~ ^{required under} 38 USC 4318 (b) (3) and regulations adopted thereunder, ~~and including~~
18 ~~all reasonably determinable pay increases that would have occurred.~~

19 2. 'Department to bill employer for contributions and interest.' Upon receipt
20 of the report under subd. 1., the department shall bill the employer for all required
21 contributions due, plus interest, in the same manner under s. 40.06 (5) as if the
22 contributions were due for previously unreported earnings in each year of the
23 employee's service in the uniformed services. The billing shall state the amount of
24 contributions the employee would ordinarily be required to pay. The employer shall

BILL

SECTION 32

Insert 16-3

1 ~~pay the amount billed to the department within 30 days. The department may collect~~
2 ~~additional interest if there is a delay in payment.~~

3 3. 'Employer may collect required contributions from employee.' The employer
4 may collect from the employee, and retain, the amount of the contributions the
5 employee would have been required to pay if he or she had been continuously
6 employed by the participating employer during the period of service in the uniformed
7 services. The employer shall treat the employee as if he or she had been continuously
8 employed and extend the benefit of any applicable agreement under which the
9 employer would have paid all or part of the employee's required contributions during
10 that period. The employee may not be required or permitted to pay any interest on
11 the required contributions, in accordance with 29 CFR 1002.263.

12 4. 'Employee payments deadline.' The employee's payment of required
13 contributions must be completed by the earliest of the following:

14 a. Before terminating employment with the post-uniformed service employer.

15 b. The expiration of the time period starting with the date of reemployment and
16 continuing for 3 times the length of the employee's immediate past period of service
17 in the uniformed services.

18 c. The date 5 years after the date of initial post-uniformed service
19 reemployment.

20 5. 'Treatment of employee partial payment.' If the employee fails to pay all
21 required contributions associated with the period of service in the uniformed service
22 before leaving employment with the post-uniformed service employer or within the
23 time period specified in subd. 4., the department may not accept any further
24 payments and shall prorate the creditable service granted under this subsection.
25 The employer is entitled to a credit for contributions and interest paid on the

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1 earnings for which the employee did not pay his or her required contributions. The
2 department shall, by rule, provide how to attribute the contributions actually paid
3 by the employee and how to calculate the credit due the employer.

4 6. 'Creditable service.' Upon receipt of the contributions due on earnings, the
5 department shall grant the employee creditable service for any period of service in
6 the uniformed services not already granted under sub. (1) based on the hours
7 reported by the employer under subd. 1. In the event of a partial payment of
8 contributions due from the employee, any creditable service granted under sub. (1)
9 is not subject to proration.

10 (b) *Time period for making election.* For employees who return to employment
11 with a participating employer after service in the uniformed services on or after the
12 effective date of this paragraph [revisor inserts date], the election described in par.

13 (a) (intro.) may not be made after the time limit for paying required contributions
14 specified in par. (a) 4. has expired.

15 (c) *When repayment of previous lump sum payment required.* If the employee
16 took a lump sum benefit under s. 40.25 after leaving participating employment to
17 begin service in the uniformed services and chooses to exercise any rights under par.
18 (a), the employee must repay to the department the lump sum benefit. The
19 repayment due is the lesser of the following:

20 1. The amount of the lump sum payment plus interest at the ^{assumed} effective rate of
21 the core division, beginning with the rate for the year in which the payment was
22 made.

23 2. The amount of the difference between the current balance of the employee's
24 required contribution accumulations in the core and variable retirement investment

BILL

1 trusts and what that balance would have been if the funds had not been withdrawn,
2 including the effects of any interest that would have accrued but for the withdrawal.

3 SECTION 33. 40.65 (3) of the statutes is amended to read:

4 40.65 (3) The Wisconsin retirement board shall determine the amount of each ✓
5 monthly benefit payable under this section and its effective date. The board shall
6 periodically review the dollar amount of each monthly benefit and adjust it to
7 conform with the provisions of this section. The board may request any income or
8 benefit information, or any information concerning a person's marital status, which
9 it considers to be necessary to implement this subsection and shall may require a
10 participant to submit a certified copy of his or her most recent state or federal income
11 tax return. The board may terminate the monthly benefit of any person who refuses
12 to submit information requested by the board or who submits false information to the
13 board. who refuses to authorize the board to obtain a copy
of his or her most recent state or federal income tax returns ✓

14 SECTION 34. 40.70 (1) (b) of the statutes is amended to read:

15 40.70 (1) (b) The employee files ~~with the department~~ an application in the
16 manner provided by rule or contract, to be effective on a date fixed by the department,
17 for one or more of the types of coverage established under this subchapter. The group
18 insurance board may provide a different method of enrollment than provided under
19 this subsection.

20 SECTION 35. 40.70 (6) of the statutes is amended to read:

21 40.70 (6) Except as provided in sub. (7m), any employee who has not applied
22 for coverage under sub. (1) within ~~6 months~~ the time period specified by rule or
23 contract after becoming eligible for coverage or any employee whose insurance
24 terminates under sub. (8) shall not thereafter become insured for that coverage
25 unless ~~prior to the attainment of age 55~~ the employee furnishes evidence of

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1 insurability satisfactory to the insurer, at his or her own expense. If the evidence is
2 approved, the employee shall become insured on the first day of the first month
3 beginning after the approval.

4 **SECTION 36.** 40.73 (3) (e) of the statutes is amended to read:

5 40.73 (3) (e) Any beneficiary who is eligible to receive a beneficiary annuity
6 may elect to receive the annuity in any of the optional annuity forms provided for
7 retirement annuities, other than as an annuity under s. 40.24 (1) (e) or any annuity
8 payable over the joint life expectancies of the beneficiary and another person. The
9 number of guaranteed monthly payments available to a beneficiary may not exceed
10 the life expectancy of the beneficiary.

11 **SECTION 37.** 40.74 (2) of the statutes is amended to read:

12 40.74 (2) A beneficiary of a deceased participant, annuitant, alternate payee,
13 beneficiary, or employee may waive absolutely and without right of reconsideration
14 or recovery all or part of any benefit payable under this chapter. The beneficiary
15 shall then be determined as if the waiving beneficiary had died prior to the decedent
16 except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2.,
17 payment shall be made as if at least one child had survived the participant, alternate
18 payee, beneficiary, employee, or annuitant. Unless the department receives the
19 beneficiary's written request to cancel the waiver before the date on which it would
20 otherwise become effective, the waiver shall be effective on the first day of the 2nd
21 month commencing 30 days after it is received by the department or the date
22 specified in the waiver, if later earlier. The waiver may be cancelled by the
23 beneficiary in writing before the effective date. A waiver received after the effective
24 date on which a beneficiary has commenced a monthly annuity under s. 40.73 (2) or

BILL

1 (3) shall apply to monthly payments payable after the effective date of the waiver.
2 Payment shall be subject to the restrictions specified in s. 40.73 (2) (b).

3 **SECTION 38.** 40.74 (6) of the statutes is created to read:

4 40.74 (6) Any potential primary beneficiary under s. 40.02 (8) who cannot be
5 located by reasonable efforts within 12 months after the later of the date of death of
6 the participant or the date on which the department determines the person, trust,
7 or estate initially became a potential primary beneficiary may be treated as a
8 beneficiary that predeceased the participant and all other potential beneficiaries.

9 **SECTION 39.** 40.74 (7) of the statutes is created to read:

10 40.74 (7) A trust that does not exist on the date of the participant's death or an
11 estate not opened or reopened within 12 months after the department determines the
12 estate initially became a potential primary beneficiary under s. 40.02 (8) may be
13 treated as a beneficiary that predeceased the participant and all other potential
14 beneficiaries.

Insert 20-15

15

SECTION 40. Nonstatutory provisions.

16 (1) DISTRIBUTION OF MONEYS FROM RESERVE ESTABLISHED UNDER 1999 WISCONSIN
17 ACT 11. Notwithstanding the requirement under 1999 Wisconsin Act 11, section 27
18 (1) (b), that the employee trust funds board make deductions on a monthly basis from
19 employers' credit balances, the board shall distribute all remaining moneys in the
20 reserve established under 1999 Wisconsin Act 11, section 27 (1) (b), before January
21 1, 2009.

22 **SECTION 41. Initial applicability.**

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3211/2insRC
RAC:.....

Insert Analysis:

5. Under current law, when a person does not provide a written beneficiary designation for death benefits under the WRS, or none of the designated beneficiaries survive, there is a sequence of relatives who become beneficiaries by default. This bill eliminates a former son-in-law or daughter-in-law as a default beneficiary. In addition, the bill adds great-grandchildren and other descendants of the deceased employee and nieces, nephews, and other descendents of the deceased employee's brothers and sisters to the list of default beneficiaries. ✓

Insert 5-8:

X **SECTION 1.** 40.02 (8) (a) 2. of the statutes is amended to read:

→ 40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all designated beneficiaries ~~so designated~~ who survive the decedent die before filing with the department a beneficiary designation applicable to that death benefit or an application for any death benefit payable, the person determined in the following sequence: group 1, widow or widower surviving spouse; group 2, children if at least one child survives of the deceased participant, employee or annuitant, in which event equal shares with the share of any deceased child shall be payable to the surviving spouse issue of the child or to the surviving children of the child if there is no spouse, or otherwise or, if there is no surviving issue of a deceased child, to the other eligible children in this group or, if deceased, their issue; group 3, grandchild; group 4, parent, in equal shares if both survive; group 5 4, brother and sister in equal shares and to the issue of any deceased brother or sister. The shares payable to the issue of a person shall be determined per stirpes. No payment may be made to a person included in any group if there is a living person in any preceding group, and s. 845.04 (6) shall not apply to a determination under this subsection.

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335.

Insert 8-3: ✓

SECTION 2. 40.02 (22) (e) of the statutes is amended to read:

40.02 (22) (e) Except For an employee serving in a position covered under and meeting the requirements of 38 USC 4301, et. seq., except for OASDHI purposes, means compensation deemed to have been paid for services deemed to have been rendered while serving in a position covered under, and meeting the requirements of, 38 USC 4301, et seq., at the employee's rate of pay prior to beginning such service determined as required under 38 USC 4318 (b) (3) and regulations adopted thereunder, provided contributions and premiums on the deemed earnings compensation are paid as required under s. 40.05 or 40.287. ✓

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335.

Insert 16-3:

fix

2. 'Employer to pay.' The employer shall pay all required contributions due on the employee's compensation determined as required under 38 USC 4318 (b) (3) and regulations adopted thereunder, in the manner specified under s. 40.06 (5), including interest, as if the contributions were due for previously unreported earnings in each year of the employee's service in the uniformed services.

Insert 20-15: ✓

→

SECTION 3. 40.80 (2r) (b) of the statutes is renumbered 40.80 (1r) and amended

40.08

to read:

40.08

(40.80 (1r) Notwithstanding s. 40.08 sub. (1), a participant's accumulated assets held in an account in the deferred compensation plan established under this subchapter may be divided, in the manner provided by the deferred compensation

subch. VII

VII

S. 40.80

board and under ~~sub.~~ (2r), pursuant to a domestic relations order, as defined under

sub. (2r) (a).

S. 40.80

History: 1981 c. 187; 1989 a. 13, 31, 336; 1991 a. 152; 1995 a. 27; 2003 a. 160; 2005 a. 150.



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3211/2dn

RAC: /:.....

gjs

Bob Conlin:

A couple of minor comments:

1. I am not sure what is the legal effect intended by the renumbering and amendment of s. 40.80 (2r) (b) to s. 40.80 (1r). I can see no legal differences between the two provisions.

2. In s. 40.02 (8) (a) 2., I simply said "per stirpes" and not "per stirpes as provided in s. 854.04 (1)." Section 854.04 (1) (a) captures all references to "per stirpes". I went ahead and provided that s. 854.04 (6) does not apply to determinations under s. 40.02 (8) (a). I'm not really sure of the policy reason for this exception, but I've drafted it per your request. After all, a beneficiary designation under s. 40.02 (8) (a) is included as part of a "governing instrument" under s. 854.01 (2).

3. I did not change the Initial Applicability provision to include "on or after". LRB drafting conventions provide that we treat the applicability provision as an *initial* applicability provision to indicate the earliest date when a change in law could *first* apply. In this instance, the earliest date that the treatment of s. 40.05 (2) could first apply to unfunded prior service liabilities under the Wisconsin Retirement System is to liabilities that are incurred on the effective date of this subsection. The amended s. 40.05 (2) will apply to all unfunded prior service liability incurred in the future.

Rick A. Champagne
Senior Legislative Attorney
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(b)

(b)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3211/2dn
RAC:cjs:rs

November 7, 2007

Bob Conlin:

A couple of minor comments:

1. I am not sure what is the legal effect intended by the renumbering and amendment of s. 40.80 (2r) (b) to s. 40.80 (1r). I can see no legal differences between the two provisions.
2. In s. 40.02 (8) (a) 2., I simply said "per stirpes" and not "per stirpes as provided in s. 854.04 (1)." Section 854.04 (1) (a) captures all references to "per stirpes". I went ahead and provided that s. 854.04 (6) does not apply to determinations under s. 40.02 (8) (a). I'm not really sure of the policy reason for this exception, but I've drafted it per your request. After all, a beneficiary designation under s. 40.02 (8) (a) is included as part of a "governing instrument" under s. 854.01 (2).
3. I did not change the Initial Applicability provision to include "on or after". LRB drafting conventions provide that we treat the applicability provision as an *initial* applicability provision to indicate the earliest date when a change in law could *first* apply. In this instance, the earliest date that the treatment of s. 40.05 (2) (b) could first apply to unfunded prior service liabilities under the Wisconsin Retirement System is to liabilities that are incurred on the effective date of this subsection. The amended s. 40.05 (2) (b) will apply to all unfunded prior service liability incurred in the future.

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Champagne, Rick

From: Conlin, Bob [Bob.Conlin@etf.state.wi.us]
Sent: Tuesday, December 04, 2007 8:19 AM
To: Champagne, Rick
Subject: Final Changes to ETF Draft

Rick:

Last set of changes to LRB 3211/2:

1. The first change deals with creating somewhat of a "hold harmless" provision in the portion of the draft concerning the proration of military service. Under the change we have proposed, members tend to have service with a higher multiplier later in their careers and the change will result in a slightly higher benefit in some cases after the proration. However, some will have the higher multiplier in earlier portions of their careers and the change could result in a slight decrease in benefits. The following language would provide that for these latter folks, we would prorate or allocate military service to their benefit. Thus, we'd like something like the following:

Page 7, line 5, before the period insert the following: " , unless a higher benefit would result from the allocation of military service based on the participant's creditable service on the date that the participant attains 5, 10, 15, or 20 years of creditable service".

I'm told we'll be able to construct a tech program that will identify those cases in which this new provision would apply so that we don't have to do 2 calculations in each case. Thus, the original change will allow us to automate the process and the "hold harmless" will protect those few members who may be better off under current law without creating a ton of additional work for us. If you have a better way of drafting it, feel free to do so.

2. The second change is unrelated and applies to the USERRA stuff:

Page 15, line 17, delete "constructive".

Page 15, line 18, after "and" insert "creditable service on a" and after "year" insert "basis".

That's it. Thanks for your help on this. Let me know if you have questions.

Bob

Bob Conlin, Deputy Secretary
Wisconsin Dept. of Employee Trust Funds
(608)261-7940

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