



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3211/4 5  
RAC:all:jf

*Gov*

*RMR*

**2007 BILL**

*-regen cat.*

1 **AN ACT** *to renumber* 40.02 (15) (b); *to renumber and amend* 40.02 (8) (b), 40.02  
2 (15) (a), 40.02 (15) (c) and 40.80 (2r) (b); *to amend* 40.02 (8) (a) 2., 40.02 (17)  
3 (intro.), 40.02 (22) (e), 40.02 (39m), 40.02 (48m) (f), 40.03 (6) (i), 40.05 (2) (b),  
4 40.05 (2) (bu), 40.05 (2) (bv), 40.05 (2) (bw), 40.05 (2) (bz), 40.08 (1), 40.08 (3),  
5 40.08 (4), 40.23 (2m) (em) 1. c., 40.23 (2m) (fm), 40.24 (1) (e), 40.25 (5) (b), 40.65  
6 (3), 40.70 (1) (b), 40.70 (6), 40.73 (3) (e) and 40.74 (2); **to repeal and recreate**  
7 40.08 (6) (e); and **to create** 40.02 (8) (b) 2., 40.02 (53m), 40.02 (55r), 40.08 (1r),  
8 40.287 (title), 40.287 (1) (title), 40.287 (1) (a) 8., 40.287 (1) (b) (title), 40.287 (2),  
9 40.74 (6) and 40.74 (7) of the statutes; **relating to:** creditable military service  
10 under 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.

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***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 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 descendants of the deceased employee's brothers and sisters to the list of default beneficiaries.

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.

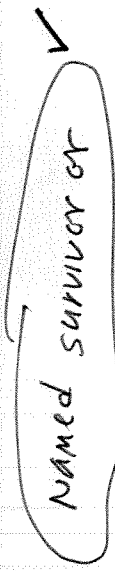
7. Under current law, to be insured under the group life insurance plan administered by DETF, an eligible employee must file an application with DETF. This bill requires that the application be filed in the manner provided by rule or contract. In addition, the bill also eliminates a requirement that 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. The bill 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.

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.



Named survivor of

**BILL**

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 the Wisconsin Retirement Board may require a participant to authorize the Wisconsin Retirement Board to obtain a copy of the participant's tax returns.

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.

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.

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***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           designated beneficiaries ~~so designated~~ who survive the decedent die before filing  
4           with the department a beneficiary designation applicable to that death benefit or an  
5           application for any death benefit payable, the person determined in the following  
6           sequence: group 1, ~~widow or widower~~ surviving spouse; group 2, children if at least  
7           one child survives of the deceased participant, employee or annuitant, in which event

**BILL**

1 equal shares, with the share of any deceased child shall be payable to the surviving  
2 spouse issue of the child or to the surviving children of the child if there is no spouse,  
3 or otherwise or, if there is no surviving issue of a deceased child, to the other eligible  
4 children in this group or, if deceased, their issue; group 3, grandchild; group 4,  
5 parent, in equal shares if both survive; group 5 4, brother and sister in equal shares  
6 and the issue of any deceased brother or sister. The shares payable to the issue of  
7 a person shall be determined per stirpes. No payment may be made to a person  
8 included in any group if there is a living person in any preceding group, and s. 854.04  
9 (6) shall not apply to a determination under this subsection.

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

12 40.02 (8) (b) (intro.) "Beneficiary" does not include -a- any of the following:

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

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

23 40.02 (8) (b) 2. For purposes of a group life insurance benefit plan under this  
24 chapter, and at the discretion of the department, an individual who is notified by the  
25 department or insurer that a benefit is payable to the individual because of the death

**BILL**

1 of an insured person, who is provided with any necessary application form, and who  
2 does not then apply for the benefit within 12 months of the date of notification by the  
3 department that the benefit is payable to the individual.

4 **SECTION 4.** 40.02 (15) (a) of the statutes is renumbered 40.287 (1) (a), and  
5 40.287 (1) (a) (intro.), as renumbered, is amended to read:

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

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

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

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

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

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

**BILL**

1 (c) Creditable military service under this ~~paragraph~~ subsection shall be  
2 allocated prorated at the time of retirement in proportion to the amount of the  
3 participant's creditable service for each of the types of creditable service set forth in  
4 s. 40.23 (2m) (e), unless a higher benefit would result from the allocation of military  
5 service based on the participant's creditable service on the date the participant  
6 attains 5, 10, 15 or 20 years of creditable service.

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

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

15 40.02 (17) (intro.) "Creditable service" means the creditable current and prior  
16 service, expressed in years and fractions of a year to the nearest one-hundredth, for  
17 which a participating employee receives or is considered to receive earnings under  
18 sub. (22) (e) or (em) and for which contributions have been made as required by s.  
19 40.05 (1) and (2) and creditable military service under s. 40.287, service credited  
20 under s. 40.285 (2) (b) and service credited under s. 40.29, expressed in years and  
21 fractions of years to the nearest one-hundredth. How much service in any annual  
22 earnings period is the full-time equivalent of one year of creditable service shall be  
23 determined by rule by the department and the rules may provide for differing  
24 equivalents for different types of employment. Except as provided under s. 40.285  
25 (2) (e) and (f), the amount of creditable service for periods prior to January 1, 1982,

**BILL****SECTION 7**

1 shall be the amount for which the participant was eligible under the applicable laws  
2 and rules in effect prior to January 1, 1982. No more than one year of creditable  
3 service shall be granted for any annual earnings period. Creditable service is  
4 determined in the following manner for the following persons:

5 **SECTION 8.** 40.02 (22) (e) of the statutes is amended to read:

6 40.02 (22) (e) Except For an employee serving in a position covered under and  
7 meeting the requirements of 38 USC 4301, et. seq., except for OASDHI purposes,  
8 means compensation deemed to have been paid for services deemed to have been  
9 rendered while serving in a position covered under, and meeting the requirements  
10 of, 38 USC 4301, et seq., at the employee's rate of pay prior to beginning such service  
11 determined as required under 38 USC 4318 (b) (3) and regulations adopted  
12 thereunder, provided contributions and premiums on the deemed earnings  
13 compensation are paid as required under s. 40.05 or 40.287.

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

15 40.02 (39m) "Internal revenue code" means the federal internal revenue code  
16 under Title 26, USC, as defined for the current taxable year under s. 71.01 (6)  
17 amended, and applicable federal regulations adopted under the internal revenue  
18 code by the federal department of the treasury, including temporary regulations.

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

20 40.02 (48m) (f) The judgment, decree or order requires the participant to  
21 certify, in a form prescribed by the department, all of the participant's active military  
22 service, as described in sub. (15) s. 40.287 (1) (a).

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

24 40.02 (53m) "Service in the uniformed services" has the meaning given in 38  
25 USC 4303 (13) and regulations adopted thereunder.



**BILL**

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

2           40.02 (**55r**) "Uniformed services" has the meaning given in 38 USC 4303 (16)  
3 and regulations adopted thereunder.

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

5           40.03 (**6**) (i) ~~May~~ Shall accept timely appeals of determinations made by the  
6 department affecting any right or benefit under any group insurance plan provided  
7 for under this chapter.

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

9           40.05 (**2**) (b) Contributions shall be made by each participating employer for  
10 unfunded prior service liability in a percentage of the earnings of each participating  
11 employee. A separate percentage rate shall be determined for the employee  
12 occupational categories under s. 40.23 (2m) as of the employer's effective date of  
13 participation. The rates shall be sufficient to amortize as a level percent of payroll  
14 over a period of 40 30 years from the later of that date or January 1, 1986, the  
15 unfunded prior service liability for the categories of employees of each employer  
16 determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior  
17 service granted on or after January 1, 1986, increased to reflect the effect of 1983  
18 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986,  
19 by interest at the assumed rate on the unpaid balance at the end of the year and  
20 adjusted under pars. (bu), (bv) and (bw).

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

22           40.05 (**2**) (bu) The employer contribution rate determined under par. (b) for  
23 each employer shall be adjusted, if necessary, to reflect the added prior service  
24 liability of paying additional joint and survivor death benefits to beneficiaries of  
25 participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be

**BILL****SECTION 15**

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

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

5 40.05 (2) (bv) The employer contribution rate determined under par. (b) for  
6 participating employees who served in the U.S. maritime service shall be adjusted  
7 to reflect the cost of granting creditable service under s. ~~40.02 (15)~~ 40.287 (1) (a) 7.  
8 and that rate shall be sufficient to amortize the unfunded prior service liability of the  
9 employers over the remainder of the 40-year amortization period under ~~par. (b)~~ s.  
10 40.05 (2) (b), 2005 stats.

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

12 40.05 (2) (bw) The employer contribution rate determined under par. (b) for the  
13 University of Wisconsin System shall be adjusted to reflect the cost of granting  
14 creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize  
15 the unfunded prior service liability of the employers over the remainder of the  
16 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005 stats.

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

18 40.05 (2) (bz) The employer contribution rate determined under par. (b) for the  
19 department of administration shall be adjusted to reflect the cost of granting  
20 creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize  
21 the unfunded prior service liability of the department of administration over the  
22 remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005  
23 stats.

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

**BILL**

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

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

14           40.08 (1r) DELINQUENT STATE TAX OBLIGATIONS. Notwithstanding sub. (1) and s.  
15 40.01 (2), the department of revenue may attach any lump sum payment or monthly  
16 annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 to satisfy delinquent tax  
17 obligations. The board and any member or agent thereof and the department and  
18 any employee or agent thereof are immune from civil liability for any act or omission  
19 while performing official duties relating to withholding any payment under this  
20 subsection.

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

22           40.08 (3) WAIVERS. Any participant, beneficiary, or distributee of any estate  
23 may waive, absolutely and without right of reconsideration or recovery, the right to  
24 or the payment of all or any portion of any benefit payable or to become payable under  
25 this chapter. The waiver shall be effective ~~on the first day of the 2nd month~~

**BILL****SECTION 21**

1 ~~commencing 30 days~~ after it is received by the department or on the date specified  
2 in the waiver, if later earlier. The waiver may be cancelled by the participant,  
3 beneficiary, or distributee in writing before the effective date.

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

5 40.08 (4) RETENTION OF PAYMENTS. Unless voluntarily repaid and except as  
6 limited by sub. (10), the department may retain out of any annuity or benefit an  
7 amount as the department in its discretion may determine, for the purpose of  
8 reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25  
9 (5) or for any money paid, plus interest at the ~~effective rate of the core annuity~~  
10 ~~division~~ assumed rate, unless the department sets a different rate by rule, to any  
11 person or estate, through misrepresentation, fraud, or error. Upon the request of the  
12 department any employer shall withhold from any sum payable by the employer to  
13 any person or estate and remit to the department any amount, plus interest at the  
14 ~~effective rate of the core annuity division~~ assumed rate, unless the department sets  
15 a different rate by rule, which the department paid to the person or estate through  
16 misrepresentation, fraud, or error. Any amount, plus interest at the ~~effective rate~~  
17 assumed rate, unless the department sets a different rate by rule, not recovered by  
18 the department from the employer may be procured by the department by action  
19 brought against the person or estate.

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

21 40.08 (6) (e) In accordance with rules promulgated by the department, and at  
22 the rate of interest established by rule, the department may credit interest on  
23 moneys refunded or credited under this subsection.

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

**BILL**

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

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

5           40.23 (2m) (fm) Notwithstanding s. 40.02 (17) (intro.), for purposes of  
6           determining creditable service under par. (f) 2., participants with at least 0.75 of a  
7           year of creditable service in any annual earnings period shall be treated as having  
8           one year of creditable service for that annual earnings period. To be eligible for the  
9           treatment provided by this paragraph, the participant must have earned only a  
10          partial year of creditable service in at least 5 of the 10 annual earnings periods  
11          immediately preceding the annual earnings period in which the participant  
12          terminated covered employment, and the participant must notify the department of  
13          the applicability of this paragraph to the participant's service. The participant is not  
14          eligible for the treatment provided by this paragraph if such notification is provided  
15          by the participant later than 60 days after the participant's annuity effective date.  
16          This paragraph does not apply to service credited under s. 40.02 (15) 40.287 (1) or (3)  
17          or to creditable service as a teacher.

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

19          40.24 (1) (e) A reduced annuity payable in the normal form or any of the  
20          optional life forms provided under this section, plus a temporary annuity payable  
21          monthly but terminating with the payment payable in the month following the  
22          month in which the annuitant attains age 62 ~~or, if earlier, on the death of the~~  
23          annuitant. If the annuitant dies before the end of the final payment, the remaining  
24          payments of the temporary annuity certain shall be made<sup>y</sup> in accordance with s. 40.73  
25          (2) to the annuitant's beneficiary. It is the intent of this option that so far as is

NO  
to the named survivor<sup>✓</sup> or, if  
there is no living named survivor,

**BILL****SECTION 26**

1 practicable the amounts of the life annuity and temporary annuity shall be  
2 determined so that the annuitant's total anticipated benefits from the fund and from  
3 his or her primary OASDHI benefit will be the same each month both before and after  
4 attainment of age 62.

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

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

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

23 **40.287 (title) Creditable military service.**

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

25 **40.287 (1) (title) CREDIT FOR MILITARY SERVICE WITHOUT CONTRIBUTIONS.**

**BILL**

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

2           40.287 (1) (a) 8. This subsection does not apply if the person ceased to be a  
3 participant by taking a benefit under s. 40.25 between the dates the person left  
4 participating employment and returned to participating employment described in  
5 subds. 2. and 3. Failure to qualify for creditable military service under this  
6 subsection does not affect a person's eligibility under sub. (2).

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

8           40.287 (1) (b) *Constructive category of employment.*

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

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

17           1. 'Employer to report earnings and hours of service.' For each annual earnings  
18 period and creditable service on a calendar year basis during the employee's service  
19 in the uniformed services, the employer shall determine the employee's hours of  
20 service and earnings during those periods as if the employee had been continuously  
21 employed and report those amounts to the department. The employee's earnings  
22 shall be the employee's compensation determined as required under 38 USC 4318 (b)  
23 (3) and regulations adopted thereunder.

24           2. 'Employer to pay.' The employer shall pay all required contributions due on  
25 the employee's compensation determined as required under 38 USC 4318 (b) (3) and

**BILL**

1 regulations adopted thereunder, in the manner specified under s. 40.06 (5), including  
2 interest, as if the contributions were due for previously unreported earnings in each  
3 year of the employee's service in the uniformed services.

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

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

- 15 a. Before terminating employment with the post-uniformed service employer.  
16 b. The expiration of the time period starting with the date of reemployment and  
17 continuing for 3 times the length of the employee's immediate past period of service  
18 in the uniformed services.  
19 c. The date 5 years after the date of initial post-uniformed service  
20 reemployment.

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



**BILL**

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

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

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

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

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

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

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

**BILL****SECTION 32**

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~~ authorize the board to obtain a copy of his or her  
11 most recent state or federal income tax return. The board may terminate the  
12 monthly benefit of any person who refuses to submit information requested by the  
13 board, who refuses to authorize the board to obtain a copy of his or her most recent  
14 state or federal income tax return, or who submits false information to the board.

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

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

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

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

**BILL**

1 unless ~~prior to the attainment of age 55~~ the employee furnishes evidence of  
2 insurability satisfactory to the insurer, at his or her own expense. If the evidence is  
3 approved, the employee shall become insured on the first day of the first month  
4 beginning after the approval.

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

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

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

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

**BILL****SECTION 37**

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.

15 **SECTION 40.** 40.80 (2r) (b) of the statutes is renumbered 40.08 (1r) and amended  
16 to read:

17 40.08 (1r) Notwithstanding s. ~~40.08 sub.~~ (1), a participant's accumulated  
18 assets held in an account in the deferred compensation plan established under this  
19 subchapter subch. VII may be divided, in the manner provided by the deferred  
20 compensation board and under s. 40.80 (2r), pursuant to a domestic relations order,  
21 as defined under s. 40.80 (2r) (a).

22 **SECTION 41. Nonstatutory provisions.**

23 (1) DISTRIBUTION OF MONEYS FROM RESERVE ESTABLISHED UNDER 1999 WISCONSIN  
24 ACT 11. Notwithstanding the requirement under 1999 Wisconsin Act 11, section 27  
25 (1) (b), that the employee trust funds board make deductions on a monthly basis from

**BILL**

1 employers' credit balances, the board shall distribute all remaining moneys in the  
2 reserve established under 1999 Wisconsin Act 11, section 27 (1) (b), before January  
3 1, 2009.

**SECTION 42. Initial applicability.**

4  
5 (1) The treatment of section 40.05 (2) (b) of the statutes first applies to  
6 unfunded prior service liabilities under the Wisconsin Retirement System that are  
7 incurred on the effective date of this subsection.

8 (2) The treatment of section 40.24 (1) (e) of the statutes first applies to annuities  
9 *that become effective*  
initially paid on the effective date of this subsection. ✓

**SECTION 43. Effective dates.** This act takes effect on the day after publication,

10  
11 except as follows:

12 (1) The treatment of section 40.24 (1) (e) of the statutes and SECTION 42 (2) of  
13 this act take effect on the first day of the 3rd month after publication.

14 (END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3211/5  
RAC:all:rs

6

*SOON*

RMR

**2007 BILL**

X

- regem. cat.

1 **AN ACT** to renumber 40.02 (15) (b); to renumber and amend 40.02 (8) (b), 40.02  
2 (15) (a), 40.02 (15) (c) and 40.80 (2r) (b); to amend 40.02 (8) (a) 2., 40.02 (17)  
3 (intro.), 40.02 (22) (e), 40.02 (39m), 40.02 (48m) (f), 40.03 (6) (i), 40.05 (2) (b),  
4 40.05 (2) (bu), 40.05 (2) (bv), 40.05 (2) (bw), 40.05 (2) (bz), 40.08 (1), 40.08 (3),  
5 40.08 (4), 40.23 (2m) (em) 1. c., 40.23 (2m) (fm), 40.24 (1) (e), 40.25 (5) (b), 40.65  
6 (3), 40.70 (1) (b), 40.70 (6), 40.73 (3) (e) and 40.74 (2); to repeal and recreate  
7 40.08 (6) (e); and to create 40.02 (8) (b) 2., 40.02 (53m), 40.02 (55r), 40.08 (1r),  
8 40.287 (title), 40.287 (1) (title), 40.287 (1) (a) 8., 40.287 (1) (b) (title), 40.287 (2),  
9 40.74 (6) and 40.74 (7) of the statutes; relating to: ~~creditable military service~~  
10 ~~under 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.

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***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.

2 ~~1~~ 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.

3 ~~2~~ 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 descendants of the deceased employee's brothers and sisters to the list of default beneficiaries.

4 ~~3~~ 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 named survivor or beneficiary to continue receiving the temporary additional annuity until the month after the month in which the annuitant would have attained age 62.

5 ~~4~~ 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.

6 ~~5~~ 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. The bill 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.

7 ~~6~~ 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.

8 ~~7~~ 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.



**BILL**

9 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.

10 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.

11 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 the Wisconsin Retirement Board may require a participant to authorize the Wisconsin Retirement Board to obtain a copy of the participant's tax returns.

12 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.

13 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.

14 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.

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.

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***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 designated beneficiaries so designated who survive the decedent die before filing  
4 with the department a beneficiary designation applicable to that death benefit or an  
5 application for any death benefit payable, the person determined in the following

**BILL**

1 sequence: group 1, ~~widow or widower~~ surviving spouse; group 2, children if at least  
2 ~~one child survives of the deceased~~ participant, employee or annuitant, in which event  
3 equal shares, with the share of any deceased child shall be payable to the surviving  
4 spouse issue of the child or to the surviving children of the child if there is no spouse,  
5 ~~or otherwise or, if there is no surviving issue of a deceased child,~~ to the other eligible  
6 children in this group ~~or, if deceased, their issue~~; group 3, grandchild; group 4,  
7 parent, in equal shares if both survive; group 5 ~~4~~, brother and sister in equal shares  
8 and the issue of any deceased brother or sister. The shares payable to the issue of  
9 a person shall be determined per stirpes. No payment may be made to a person  
10 included in any group if there is a living person in any preceding group, and s. 854.04  
11 (6) shall not apply to a determination under this subsection.

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

14 40.02 (8) (b) (intro.) "Beneficiary" does not include ~~a~~ any of the following:

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

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

**BILL**

1           40.02 (8) (b) 2. For purposes of a group life insurance benefit plan under this  
 2 chapter, and at the discretion of the department, an individual who is notified by the  
 3 department or insurer that a benefit is payable to the individual because of the death  
 4 of an insured person, who is provided with any necessary application form, and who  
 5 does not then apply for the benefit within 12 months of the date of notification by the  
 6 department that the benefit is payable to the individual.

7           **SECTION 4.** 40.02 (15) (a) of the statutes is renumbered 40.287 (1) (a),<sup>✓</sup> and  
 8 40.287 (1) (a) (intro.), as renumbered, is amended to read:

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

14           **SECTION 5.** 40.02 (15) (b) of the statutes is renumbered 40.287 (1) (b).<sup>✓</sup>

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

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

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

**BILL**

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

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

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

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

17 40.02 (17) (intro.) "Creditable service" means the creditable current and prior  
18 service, expressed in years and fractions of a year to the nearest one-hundredth, for  
19 which a participating employee receives or is considered to receive earnings under  
20 sub. (22) (e) or (em) and for which contributions have been made as required by s.  
21 40.05 (1) and (2) and creditable military service under s. 40.287, service credited  
22 under s. 40.285 (2) (b) and service credited under s. 40.29, expressed in years and  
23 fractions of years to the nearest one-hundredth. How much service in any annual  
24 earnings period is the full-time equivalent of one year of creditable service shall be  
25 determined by rule by the department and the rules may provide for differing

**BILL**

1 equivalents for different types of employment. Except as provided under s. 40.285  
 2 (2) (e) and (f), the amount of creditable service for periods prior to January 1, 1982,  
 3 shall be the amount for which the participant was eligible under the applicable laws  
 4 and rules in effect prior to January 1, 1982. No more than one year of creditable  
 5 service shall be granted for any annual earnings period. Creditable service is  
 6 determined in the following manner for the following persons:

7 **SECTION 8.** 40.02 (22) (e) of the statutes is amended to read:

8 40.02 (22) (e) Except For an employee serving in a position covered under and  
 9 meeting the requirements of 38 USC 4301, et. seq., except for OASDHI purposes,  
 10 means compensation deemed to have been paid for services deemed to have been  
 11 rendered while serving in a position covered under, and meeting the requirements  
 12 of, 38 USC 4301, et seq., at the employee's rate of pay prior to beginning such service  
 13 determined as required under 38 USC 4318 (b) (3) and regulations adopted  
 14 thereunder, provided contributions and premiums on the deemed earnings  
 15 compensation are paid as required under s. 40.05/40.287.

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

17 40.02 (39m) "Internal revenue code" means the federal internal revenue code  
 18 under Title 26, USC, as defined for the current taxable year under s. 71.01 (6)  
 19 amended, and applicable federal regulations adopted under the internal revenue  
 20 code by the federal department of the treasury, including temporary regulations.

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

22 40.02 (48m) (f) The judgment, decree or order requires the participant to  
 23 certify, in a form prescribed by the department, all of the participant's active military  
 24 service, as described in sub. (15) s. 40.287 (1) (a).

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

**BILL**

1 40.02 (53m) "Service in the uniformed services" has the meaning given in 38  
2 USC 4303 (13) and regulations adopted thereunder.

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

4 40.02 (55r) "Uniformed services" has the meaning given in 38 USC 4303 (16)  
5 and regulations adopted thereunder.

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

7 40.03 (6) (i) ~~May~~ Shall accept timely appeals of determinations made by the  
8 department affecting any right or benefit under any group insurance plan provided  
9 for under this chapter.

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

11 40.05 (2) (b) Contributions shall be made by each participating employer for  
12 unfunded prior service liability in a percentage of the earnings of each participating  
13 employee. A separate percentage rate shall be determined for the employee  
14 occupational categories under s. 40.23 (2m) as of the employer's effective date of  
15 participation. The rates shall be sufficient to amortize as a level percent of payroll  
16 over a period of 40 ~~30~~ years from the later of that date or January 1, 1986, the  
17 unfunded prior service liability for the categories of employees of each employer  
18 determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior  
19 service granted on or after January 1, 1986, increased to reflect the effect of 1983  
20 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986,  
21 by interest at the assumed rate on the unpaid balance at the end of the year and  
22 adjusted under pars. (bu), (bv) and (bw).

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

24 40.05 (2) (bu) The employer contribution rate determined under par. (b) for  
25 each employer shall be adjusted, if necessary, to reflect the added prior service

**BILL****SECTION 15**

1 liability of paying additional joint and survivor death benefits to beneficiaries of  
2 participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be  
3 sufficient to amortize the unfunded prior service liability of the employers over the  
4 remainder of the 40-year amortization period under ~~par. (b)~~ <sup>✓</sup> s. 40.05 (2) (b), 2005  
5 stats.

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

7 40.05 (2) (bv) The employer contribution rate determined under par. (b) for  
8 participating employees who served in the U.S. maritime service shall be adjusted  
9 to reflect the cost of granting creditable service under s. ~~40.02 (15)~~ <sup>✓</sup> ~~40.287 (m)~~ (a) 7. *PLAIN*  
10 and that rate shall be sufficient to amortize the unfunded prior service liability of the  
11 employers over the remainder of the 40-year amortization period under ~~par. (b)~~ s.  
12 40.05 (2) (b), 2005 stats. <sup>✓</sup>

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

14 40.05 (2) (bw) The employer contribution rate determined under par. (b) for the  
15 University of Wisconsin System shall be adjusted to reflect the cost of granting  
16 creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize  
17 the unfunded prior service liability of the employers over the remainder of the  
18 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005 stats. <sup>✓</sup>

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

20 40.05 (2) (bz) The employer contribution rate determined under par. (b) for the  
21 department of administration shall be adjusted to reflect the cost of granting  
22 creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize  
23 the unfunded prior service liability of the department of administration over the  
24 remainder of the 40-year amortization period under ~~par. (b)~~ <sup>✓</sup> s. 40.05 (2) (b), 2005  
25 stats.

**BILL**

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

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

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

15           40.08 (1r) DELINQUENT STATE TAX OBLIGATIONS. Notwithstanding sub. (1) and s.  
16 40.01 (2), the department of revenue may attach any lump sum payment or monthly  
17 annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 to satisfy delinquent tax  
18 obligations. The board and any member or agent thereof and the department and  
19 any employee or agent thereof are immune from civil liability for any act or omission  
20 while performing official duties relating to withholding any payment under this  
21 subsection.

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

23           40.08 (3) WAIVERS. Any participant, beneficiary, or distributee of any estate  
24 may waive, absolutely and without right of reconsideration or recovery, the right to  
25 or the payment of all or any portion of any benefit payable or to become payable under



**BILL****SECTION 21**

1 this chapter. The waiver shall be effective ~~on the first day of the 2nd month~~  
2 ~~commencing 30 days~~ after it is received by the department or on the date specified  
3 in the waiver, if later earlier. The waiver may be cancelled by the participant,  
4 beneficiary, or distributee in writing before the effective date.

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

6 40.08 (4) RETENTION OF PAYMENTS. Unless voluntarily repaid and except as  
7 limited by sub. (10), the department may retain out of any annuity or benefit an  
8 amount as the department in its discretion may determine, for the purpose of  
9 reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25  
10 (5) or for any money paid, plus interest at the ~~effective rate of the core annuity~~  
11 ~~division assumed rate, unless the department sets a different rate by rule,~~ to any  
12 person or estate, through misrepresentation, fraud, or error. Upon the request of the  
13 department any employer shall withhold from any sum payable by the employer to  
14 any person or estate and remit to the department any amount, plus interest at the  
15 ~~effective rate of the core annuity division assumed rate, unless the department sets~~  
16 a different rate by rule, which the department paid to the person or estate through  
17 misrepresentation, fraud, or error. Any amount, plus interest at the ~~effective rate~~  
18 assumed rate, unless the department sets a different rate by rule, not recovered by  
19 the department from the employer may be procured by the department by action  
20 brought against the person or estate.

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

22 40.08 (6) (e) In accordance with rules promulgated by the department, and at  
23 the rate of interest established by rule, the department may credit interest on  
24 moneys refunded or credited under this subsection.

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

**BILL**

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

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

5 40.23 (2m) (fm) Notwithstanding s. 40.02 (17) (intro.), for purposes of  
6 determining creditable service under par. (f) 2., participants with at least 0.75 of a  
7 year of creditable service in any annual earnings period shall be treated as having  
8 one year of creditable service for that annual earnings period. To be eligible for the  
9 treatment provided by this paragraph, the participant must have earned only a  
10 partial year of creditable service in at least 5 of the 10 annual earnings periods  
11 immediately preceding the annual earnings period in which the participant  
12 terminated covered employment, and the participant must notify the department of  
13 the applicability of this paragraph to the participant's service. The participant is not  
14 eligible for the treatment provided by this paragraph if such notification is provided  
15 by the participant later than 60 days after the participant's annuity effective date.  
16 This paragraph does not apply to service credited under s. 40.02 (15) 40.287 (1) or (3)  
17 or to creditable service as a teacher.

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

19 40.24 (1) (e) A reduced annuity payable in the normal form or any of the  
20 optional life forms provided under this section, plus a temporary annuity payable  
21 monthly but terminating with the payment payable in the month following the  
22 month in which the annuitant attains age 62 or, if earlier, on the death of the  
23 annuitant. If the annuitant dies before the end of the final payment, the remaining  
24 payments of the temporary annuity certain shall be made to the named survivor or,  
25 if there is no living named survivor, in accordance with s. 40.73 (2) to the annuitant's

**BILL**

1 beneficiary. It is the intent of this option that so far as is practicable the amounts  
 2 of the life annuity and temporary annuity shall be determined so that the annuitant's  
 3 total anticipated benefits from the fund and from his or her primary OASDHI benefit  
 4 will be the same each month both before and after attainment of age 62.

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

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

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

23 **40.287 (title) Creditable military service.**

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

25 **40.287 (1) (title) CREDIT FOR MILITARY SERVICE WITHOUT CONTRIBUTIONS.**

## BILL

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

2 40.287 (1) (a) 8. This subsection does not apply if the person ceased to be a  
3 participant by taking a benefit under s. 40.25 between the dates the person left  
4 participating employment and returned to participating employment described in  
5 subds. 2. and 3. Failure to qualify for creditable military service under this  
6 subsection does not affect a person's eligibility under sub. (2).

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

8 40.287 (1) (b) *Constructive category of employment.*

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

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

17 1. 'Employer to report earnings and hours of service.' For each annual earnings  
18 period and creditable service on a calendar year basis during the employee's service  
19 in the uniformed services, the employer shall determine the employee's hours of  
20 service and earnings during those periods as if the employee had been continuously  
21 employed and report those amounts to the department. The employee's earnings  
22 shall be the employee's compensation determined as required under 38 USC 4318 (b)  
23 (3) and regulations adopted thereunder.

24 2. 'Employer to pay.' The employer shall pay all required contributions due on  
25 the employee's compensation determined as required under 38 USC 4318 (b) (3) and

**BILL****SECTION 32**

1 regulations adopted thereunder, in the manner specified under s. 40.06 (5), including  
2 interest, as if the contributions were due for previously unreported earnings in each  
3 year of the employee's service in the uniformed services.

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

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

- 15 a. Before terminating employment with the post-uniformed service employer.  
16 b. The expiration of the time period starting with the date of reemployment and  
17 continuing for 3 times the length of the employee's immediate past period of service  
18 in the uniformed services.  
19 c. The date 5 years after the date of initial post-uniformed service  
20 reemployment.

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

**BILL**

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

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

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

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

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

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

24 2. The amount of the difference between the current balance of the employee's  
25 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~~ authorize the board to obtain a copy of his or her  
11 most recent state or federal income tax return. The board may terminate the  
12 monthly benefit of any person who refuses to submit information requested by the  
13 board, who refuses to authorize the board to obtain a copy of his or her most recent  
14 state or federal income tax return, or who submits false information to the board.

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

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

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

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

**BILL**

1 unless ~~prior to the attainment of age 55~~ the employee furnishes evidence of  
2 insurability satisfactory to the insurer, at his or her own expense. If the evidence is  
3 approved, the employee shall become insured on the first day of the first month  
4 beginning after the approval.

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

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

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

13 40.74 (2) A beneficiary of a deceased participant, annuitant, alternate payee,  
14 beneficiary, or employee may waive absolutely and without right of reconsideration  
15 or recovery all or part of any benefit payable under this chapter. The beneficiary  
16 shall then be determined as if the waiving beneficiary had died prior to the decedent  
17 except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2.,  
18 payment shall be made as if at least one child had survived the participant, alternate  
19 payee, beneficiary, employee, or annuitant. Unless the department receives the  
20 beneficiary's written request to cancel the waiver before the date on which it would  
21 otherwise become effective, the waiver shall be effective ~~on the first day of the 2nd~~  
22 ~~month commencing 30 days~~ after it is received by the department or the date  
23 specified in the waiver, if ~~later~~ earlier. The waiver may be cancelled by the  
24 beneficiary in writing before the effective date. A waiver received after the effective  
25 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.

15 **SECTION 40.** 40.80 (2r) (b) of the statutes is renumbered 40.08 (1r) and amended  
16 to read:

17 40.08 (1r) Notwithstanding s. ~~40.08 sub.~~ (1), a participant's accumulated  
18 assets held in an account in the deferred compensation plan established under this  
19 subchapter subch. VII may be divided, in the manner provided by the deferred  
20 compensation board and under s. 40.80 (2r), pursuant to a domestic relations order,  
21 as defined under s. 40.80 (2r) (a).

22 **SECTION 41. Nonstatutory provisions.**

23 (1) DISTRIBUTION OF MONEYS FROM RESERVE ESTABLISHED UNDER 1999 WISCONSIN  
24 ACT 11. Notwithstanding the requirement under 1999 Wisconsin Act 11, section 27  
25 (1) (b), that the employee trust funds board make deductions on a monthly basis from

**BILL**

1 employers' credit balances, the board shall distribute all remaining moneys in the  
2 reserve established under 1999 Wisconsin Act 11, section 27 (1) (b), before January  
3 1, 2009.

**SECTION 42. Initial applicability.**

4  
5 (1) The treatment of section 40.05 (2) (b) ✓ of the statutes first applies to  
6 unfunded prior service liabilities under the Wisconsin Retirement System that are  
7 incurred on the effective date of this subsection.

8 (2) The treatment of section 40.24 (1) (e) ✓ of the statutes first applies to annuities  
9 that became effective on the effective date of this subsection.

10 **SECTION 43. Effective dates.** This act takes effect on the day after publication,  
11 except as follows:

12 (1) The treatment of section 40.24 (1) (e) of the statutes and SECTION 42 (2) of  
13 this act take effect on the first day of the 3rd month after publication.

14 (END)

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