



## 2019 ASSEMBLY BILL 5

February 4, 2019 - Introduced by Representatives BORN, EDMING, BRANDTJEN, BROOKS, FELZKOWSKI, HORLACHER, JAGLER, KATSMA, KRUG, KUGLITSCH, KURTZ, LOUDENBECK, MACCO, MILROY, MURPHY, MURSAU, NOVAK, PETERSEN, PLUMER, ROHRKASTE, SCHRAA, SHANKLAND, SINICKI, STEFFEN, STEINEKE, STUCK, SUBECK, SWEARINGEN, THIESFELDT, TRANEL, VANDERMEER, ZIMMERMAN, SORTWELL and TUSLER, cosponsored by Senators MARKLEIN, BEWLEY, DARLING, HANSEN, JACQUE, JOHNSON, LARSON, RISSER, SCHACHTNER, SMITH, TESTIN and BERNIER. Referred to Committee on Corrections.

1     **AN ACT** *to renumber and amend* 40.05 (2) (ar); *to amend* 40.02 (48) (b) 3., 40.02  
2           (48) (c) and 40.23 (3) (a); and *to create* 40.02 (17) (n), 40.02 (48) (am) 23., 40.02  
3           (48) (b) 5., 40.05 (1) (a) 7., 40.05 (2) (ap), 40.05 (2) (ar) 2., 40.23 (3) (c), 40.65 (4w),  
4           59.52 (8m) and 111.70 (4) (bn) of the statutes; **relating to:** classifying county  
5           jailers as protective occupation participants under the Wisconsin Retirement  
6           System and the treatment of county jailers under the Municipal Employment  
7           Relations Act.

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### ***Analysis by the Legislative Reference Bureau***

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

This bill classifies county jailers as protective occupation participants without a requirement that their principal duties involve active law enforcement or active

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fire suppression or prevention. The bill defines county jailers as persons employed by a county whose principal duties involve supervising, controlling, or maintaining a jail or persons confined in a jail, regardless of whether the jailers have been sworn regarding their duties or whether they serve on a full-time basis.

Under the bill, county jailers who become protective occupation participants on or after the bill's effective date and are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2018, are required to pay all additional employer costs resulting from their classification as protective occupation participants, including the cost of the duty disability program. County jailers who were classified as protective occupation participants before the bill's effective date and county jailers hired on or after the bill's effective date in counties that did classify county jailers as protective occupation participants on July 1, 2018, are not required to pay the additional employer costs. The bill also allows a county jailer to elect at the time of hire not to become a protective occupation participant.

Finally, under the Municipal Employment Relations Act, public safety employees may collectively bargain over wages, hours, and conditions of employment, and general employees may bargain collectively over only an annual percentage wage increase that does not exceed the annual percentage increase in the consumer price index. Under MERA, public safety employees and general employees may not be in the same collective bargaining unit. This bill amends MERA so that a county that treats a county jailer as a public safety employee on the effective date of this bill shall continue to treat any person it employs as a county jailer as a public safety employee except that, if the county subsequently raises a question regarding the appropriateness of including county jailers in a collective bargaining unit containing public safety employees, no person the county employs as a county jailer may be treated as a public safety employee.

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 and local* 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 (17) (n) of the statutes is created to read:  
2           40.02 **(17)** (n) Notwithstanding par. (d), each participant who is a county jailer  
3 and who is classified as a protective occupation participant shall be granted  
4 creditable service as a protective occupation participant for all covered service as a  
5 county jailer that was earned on or after the effective date of this paragraph .... [LRB

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1 inserts date], but may not be granted creditable service as a protective occupation  
2 participant for any covered service as a county jailer that was earned before the  
3 effective date of this paragraph .... [LRB inserts date], unless that service was earned  
4 while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a  
5 protective occupation participant.

6 **SECTION 2.** 40.02 (48) (am) 23. of the statutes is created to read:

7 40.02 (48) (am) 23. A county jailer.

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

9 40.02 (48) (b) 3. A “deputy sheriff” or a “county traffic police officer” is any  
10 officer or employee of a sheriff’s office or county traffic department, except one whose  
11 principal duties are those of a telephone operator, clerk, stenographer, machinist or  
12 mechanic and whose functions do not clearly fall within the scope of active law  
13 enforcement even though such an employee is subject to occasional call, or is  
14 occasionally called upon, to perform duties within the scope of active law  
15 enforcement. Deputy sheriff or county traffic police officer includes also does not  
16 include a county jailer, but does include any person regularly employed and  
17 qualifying as a deputy sheriff or county traffic police officer, even if temporarily  
18 assigned to other duties.

19 **SECTION 4.** 40.02 (48) (b) 5. of the statutes is created to read:

20 40.02 (48) (b) 5. A “county jailer” is an employee of a county whose principal  
21 duties involve supervising, controlling, or maintaining a jail or the persons confined  
22 in a jail, as assigned by the sheriff under s. 59.27 (1), regardless of whether the  
23 employee has been sworn regarding his or her duties or whether the employee serves  
24 on a full-time basis. Notwithstanding par. (a), an employer may classify an employee  
25 who is a county jailer as a protective occupation participant under par. (am) 23.

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1 without making a determination that the principal duties of the employee involve  
2 active law enforcement or active fire suppression or prevention. A determination  
3 under this subdivision may not be appealed under s. 40.06 (1) (e) or (em). A county  
4 jailer is not a protective occupation participant if he or she so elects with the employer  
5 under s. 59.52 (8m) or 2019 Wisconsin Act .... (this act).

6 **SECTION 5.** 40.02 (48) (c) of the statutes is amended to read:

7 40.02 (48) (c) In s. 40.65, “protective occupation participant” means a  
8 participating employee who is a police officer, fire fighter, an individual determined  
9 by a participating employer under par. (a) or (bm) to be a protective occupation  
10 participant, county undersheriff, deputy sheriff, county jailer, state probation and  
11 parole officer, county traffic police officer, conservation warden, state forest ranger,  
12 field conservation employee of the department of natural resources who is subject to  
13 call for forest fire control or warden duty, member of the state traffic patrol, state  
14 motor vehicle inspector, University of Wisconsin System full-time police officer,  
15 guard or any other employee whose principal duties are supervision and discipline  
16 of inmates at a state penal institution, excise tax investigator employed by the  
17 department of revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e)  
18 (a), or special criminal investigation agent employed by the department of justice.

19 **SECTION 6.** 40.05 (1) (a) 7. of the statutes is created to read:

20 40.05 (1) (a) 7. For a county jailer covered under subd. 3., the percentage of  
21 earnings equal to the total actuarially required contribution rate, as approved by the  
22 board under s. 40.03 (1) (e), for a participating employee whose formula rate is  
23 determined under s. 40.23 (2m) (e) 3., less the contribution rate paid by the employer  
24 for a county jailer under sub. (2) (a). This subdivision applies only to a county jailer  
25 who becomes a protective occupation participant on or after the effective date of this

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1 subdivision .... [LRB inserts date], and is employed in a county that did not classify  
2 county jailers as protective occupation participants on July 1, 2018.

3 **SECTION 7.** 40.05 (2) (ap) of the statutes is created to read:

4 40.05 (2) (ap) The contributions under par. (a) that are required to be paid by  
5 a participating employer for a county jailer whose formula rate is determined under  
6 s. 40.23 (2m) (e) 3. shall be a percentage of earnings equal to one-half of the total  
7 actuarially required contribution rate, as approved by the board under s. 40.03 (1)  
8 (e), for an employee whose formula rate is determined under s. 40.23 (2m) (e) 1. This  
9 paragraph applies only to contributions paid for a county jailer who becomes a  
10 protective occupation participant on or after the effective date of this paragraph ....  
11 [LRB inserts date], and is employed in a county that did not classify county jailers  
12 as protective occupation participants on July 1, 2018.

13 **SECTION 8.** 40.05 (2) (ar) of the statutes is renumbered 40.05 (2) (ar) 1. and  
14 amended to read:

15 40.05 (2) (ar) 1. Participating Except as provided in subd. 2., participating  
16 employers of employees subject to s. 40.65 shall contribute an additional percentage  
17 or percentages of those employees' earnings based on the experience rates  
18 determined to be appropriate by the board with the advice of the actuary.

19 **SECTION 9.** 40.05 (2) (ar) 2. of the statutes is created to read:

20 40.05 (2) (ar) 2. County jailers who become protective occupation participants  
21 on or after the effective date of this subdivision .... [LRB inserts date], and are  
22 employed in a county that did not classify county jailers as protective occupation  
23 participants on July 1, 2018, shall make the contribution under subd. 1. in lieu of  
24 their employers.

25 **SECTION 10.** 40.23 (3) (a) of the statutes is amended to read:

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1           40.23 (3) (a) Except as provided in ~~par.~~ pars. (b) and (c), the initial monthly  
2 amount of any retirement annuity in the normal form shall not be less than the  
3 money purchase annuity which can be provided by applying the sum of the  
4 participant's accumulated additional and required contributions, including interest  
5 credited to the accumulations, plus an amount from the employer accumulation  
6 reserve equal to the participant's accumulated required contributions, less any  
7 accumulated contributions to purchase other governmental service under s. 40.25  
8 (7), 2001 stats., or s. 40.285 (2) (b) to fund the annuity in accordance with the  
9 actuarial tables in effect on the annuity effective date.

10           **SECTION 11.** 40.23 (3) (c) of the statutes is created to read:

11           40.23 (3) (c) Under par. (a), for a county jailer described in s. 40.02 (48) (am)  
12 23., the amount to be paid from the employer accumulation reserve is equal to the  
13 employer required contributions, including interest, paid for a county jailer under  
14 s. 40.05 (2) (a). This paragraph applies only to a county jailer who becomes a  
15 protective occupation participant on or after the effective date of this paragraph ...  
16 [LRB inserts date], and is employed in a county that did not classify county jailers  
17 as protective occupation participants on July 1, 2018.

18           **SECTION 12.** 40.65 (4w) of the statutes is created to read:

19           40.65 (4w) A county jailer who becomes a protective occupation participant on  
20 or after the effective date of this subsection .... [LRB inserts date], is not entitled to  
21 a duty disability benefit under this section for an injury or disease occurring before  
22 the effective date of this subsection .... [LRB inserts date].

23           **SECTION 13.** 59.52 (8m) of the statutes is created to read:

24           59.52 (8m) EMPLOYMENT OF COUNTY JAILERS. The board shall provide an  
25 individual who is employed as a county jailer an option to elect not to be a protective

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1 occupation participant under s. 40.02 (48) (b) at the time the individual is hired as  
2 a county jailer. An individual shall make an election under this subsection in writing  
3 on a form provided by the board.

4 **SECTION 14.** 111.70 (4) (bn) of the statutes is created to read:

5 111.70 (4) (bn) *Public safety employee determination regarding county jailers.*

6 1. Except as provided under subd. 2., a county jailer, as defined in s. 40.02 (48) (b)  
7 5., is a general municipal employee.

8 2. A county that treats a county jailer as a public safety employee on the  
9 effective date of this subdivision .... [LRB inserts date], shall continue to treat any  
10 person it employs as a county jailer as a public safety employee except that, if the  
11 county raises a question concerning the appropriateness of including county jailers  
12 in a collective bargaining unit that includes public safety employees, no person it  
13 employs as a county jailer may be treated as a public safety employee.

14 **SECTION 15. Nonstatutory provision.**

15 (1) COUNTY JAILER OPT OUT FROM PROTECTIVE OCCUPATION PARTICIPANT STATUS  
16 UNDER WISCONSIN RETIREMENT SYSTEM. No later than 60 days after the effective date  
17 of this subsection, if an individual employed as a county jailer on the effective date  
18 of this subsection does not want to be a protective occupation participant under the  
19 Wisconsin Retirement System, the individual shall notify his or her employer in  
20 writing on a form provided by the employer. An election not to be a protective  
21 occupation participant is irrevocable.

22 **SECTION 16. Effective date.**

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

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(END)