2019 ASSEMBLY BILL 880

February 11, 2020 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Rules.

AN ACT to repeal 40.08 (1m) (f) 3.; to renumber 40.86 (1), 40.86 (2), 40.86 (3) and 40.86 (4); to amend 40.04 (3) (a), 40.04 (3) (am) 3. (intro.), 40.08 (1m) (f) 1., 40.08 (1m) (f) 2., 40.24 (7) (a) (intro.), 40.24 (7) (b), 40.285 (2) (b) 1. a. to d. and 40.63 (10); and to create 40.86 (1) (intro.) of the statutes; relating to: named various changes to the Wisconsin Retirement System (suggested as remedial legislation by the Department of Employee Trust Funds).

Analysis by the Legislative Reference Bureau

Under current law, investment gains and losses of the core and variable retirement investment trust funds are distributed in a ratio of each participating account’s average daily balance to the total average daily balance of all participating accounts. The State of Wisconsin Investment Board invests assets of the core and variable investment trust funds, which are commingled under current law, and all activity is not recorded on a daily basis for the separate participating accounts. SWIB provides certified annual earnings reports for the core and variable trust funds.

This bill provides that the Department of Employee Trust Funds may distribute the earnings to each participating account by calculating a simple average balance, which uses beginning and end-of-year balances for each participating account, and comparing that average balance to the total average balance of all participating accounts.
The bill clarifies that only an employee who is currently employed with a participating employer under the Wisconsin Retirement System may purchase other governmental service. As currently written, the statute uses the term “participant” and “participating employee.” The term “participant” includes a person who previously worked for a participating employer but has not yet taken a WRS benefit.

Under current law, the Employee Trust Funds Board contracts with employee-funded reimbursement account plan providers to provide accounts to be used by state agencies. Employee-funded reimbursement accounts are governed by provisions of the Internal Revenue Code. The bill aligns the statutory language with the language in the IRC.

Under the bill, references to beneficiaries and named survivors in statutes regarding annuity options under the WRS are amended to distinguish between a named survivor who will receive a benefit and a beneficiary.

The bill eliminates an expired provision regarding the execution of domestic relations orders (DRO) that divide a WRS account. Under current law, a DRO must be provided to DETF within 20 years after the judgment of divorce is entered. Under the original DRO law, DETF could not accept a DRO for a judgment of divorce entered before April 28, 1990. The law was amended by 1997 Wisconsin Act 125 to cover DROs for a judgment of divorce entered between January 1, 1982, and April 27, 1990. The Wisconsin Supreme Court held in Johnson v. Masters, 2013 WI 43, 347 Wis. 2d 238, 830 N.W. 2d 647 (2012), that the 20-year limit for execution of DROs issued under the amended law did not begin until the date DETF was able to divide a WRS account. The 20-year period did not begin to toll until May 2, 1998. DETF has not been authorized to accept a DRO to divide an account under the 1997 Wisconsin Act 125 since May 2, 2018.

Finally, under current law, when a disability annuity under the WRS is terminated, the person’s WRS account is reestablished and credited with interest. While a person is receiving an annuity from the WRS, the person cannot also be credited with contributions and service. The bill removes obsolete language from the statute.

For further information, see the Notes provided by the Law Revision Committee of the Joint Legislative Council.

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

SECTION 1. 40.04 (3) (a) of the statutes is amended to read:

40.04 (3) (a) The net gain or loss of the variable retirement investment trust shall be distributed annually on December 31 to each participating account in the same ratio as each account’s average daily balance within the respective trust bears to the total average daily balance of all participating accounts in the trust. The
amount to be distributed shall be the excess of the increase within the period in the
value of the assets of the trust resulting from income from the investments of the
trust and from the sale or appreciation in value of any investment of the trust, over
the decrease within the period in the value of the assets resulting from the sale or
the depreciation in value of any investments of the trust.

SECTION 2. 40.04 (3) (am) 3. (intro.) of the statutes is amended to read:

40.04 (3) (am) 3. (intro.) Annually, on December 31, the sum of all of the
following shall be distributed from the market recognition account to each
participating account in the core retirement investment trust in the same ratio as
each account’s average daily balance bears to the total average daily balance of all
participating accounts in the trust:

NOTE: Sections 1 and 2 eliminate the requirement for ETF to distribute the annual
certified earnings for the core and variable investment trust funds by calculating an
average daily balance, and instead, simply require use of an average balance.

SECTION 3. 40.08 (1m) (f) 1. of the statutes is amended to read:

40.08 (1m) (f) 1. Subject to subd. 3., if the participant is not an annuitant on
the decree date, an amount equal to the total of the alternate payee share distributed
under par. (e), including creditable service, shall be subtracted from the participant’s
account.

NOTE: Sections 3 and 4 delete cross-references to the statute in Section 5.

SECTION 4. 40.08 (1m) (f) 2. of the statutes is amended to read:

40.08 (1m) (f) 2. Subject to subd. 3., if the participant is an annuitant on the
decree date, the annuity shall be recomputed using the total value of the participant’s
account determined under par. (b) reduced by the total of the alternate payee share
transferred under par. (e) 1., in accordance with the actuarial tables in effect and
using the participant’s age on the decree date. The decree date shall be the effective
date of recomputation. If the optional annuity form before division of the participant’s account under par. (b) was not a joint and survivor annuity with the alternate payee as the named survivor, the same annuity option with no change in the remaining guarantee period, if any, shall be continued upon recomputation to the participant. The present value of the alternate payee’s share of the annuity after division shall be paid to the alternate payee as a straight life annuity based on the age of the alternate payee on the decree date. The alternate payee’s annuity shall have the same remaining guarantee period, if any, as the participant’s annuity. If the optional annuity form before division of the participant’s account under par. (b) was a joint and survivor annuity with the alternate payee as the named survivor, the present value of the annuity after division shall be paid to both the participant and the alternate payee as a straight life annuity based upon their respective ages on the decree date. If the participant’s account is reestablished under s. 40.63 (10) after the decree date, the amounts and creditable service reestablished shall be reduced by an amount equal to the percentage of the alternate payee share computed under this subdivision.

**SECTION 5.** 40.08 (1m) (f) 3. of the statutes is repealed.

NOTE: This SECTION repeals an obsolete statute relating to the division of Wisconsin Retirement System benefits for any participant whose marriage is terminated by a court during the period that begins on January 1, 1982, and ends on April 27, 1990, and for whom the Department of Employee Trust Funds receives a qualified domestic relations order after May 2, 1998.

**SECTION 6.** 40.24 (7) (a) (intro.) of the statutes is amended to read:

40.24 (7) (a) (intro.) Any participant who has been married to the same spouse, or in a domestic partnership with the same domestic partner, for at least one year immediately preceding the participant’s annuity effective date shall elect the annuity option under sub. (1) (d), the annuity option under sub. (1) (e), if the reduced
annuity under sub. (1) (e) is payable in an optional life form provided under sub. (1) (d), or an annuity option in a form provided by rule, if the annuity is payable for life with monthly payments of at least 75 percent of the amount of the annuity to be continued to the beneficiary named survivor, for life, upon the death of the participant, and the participant shall designate the spouse or domestic partner as the beneficiary named survivor, unless the participant’s application for a retirement annuity in a different optional annuity form is signed by both the participant and the participant’s spouse or domestic partner or unless the participant establishes to the satisfaction of the department that, by reason of absence or other inability, the spouse’s or domestic partner’s signature may not be obtained. This subsection does not apply to any of the following:

NOTE: Sections 6 and 7 replace the term “beneficiary” with “named survivor” in statutes relating to annuity options for the Wisconsin Retirement System.

**SECTION 7.** 40.24 (7) (b) of the statutes is amended to read:

40.24 (7) (b) In administering this subsection, the secretary may require the participant to provide the department with a certification of the participant’s marital or domestic partnership status and of the validity of the spouse’s or domestic partner’s signature. If a participant is exempted from the requirements under par. (a) on the basis of a certification which the department or a court subsequently determines to be invalid, the liability of the fund and the department shall be limited to a conversion of annuity options at the time the certification is determined to be invalid. The conversion shall be from the present value of the annuity in the optional form originally elected by the participant to an annuity with the same present value but in the optional form under sub. (1) (d) and with monthly payments of 100 percent
of the amount of the annuity paid to the annuitant to be continued to the spouse or
domestic partner beneficiary named survivor.

SECTION 8. 40.285 (2) (b) 1. a. to d. of the statutes are amended to read:

40.285 (2) (b) 1. a. The *participant participating employee* has at least 3
continuous years of creditable service at the time of application.

b. The number of years of creditable service applied for under this paragraph
does not exceed the number of years of creditable service that the *participant
participating employee* has at the date of application, excluding all creditable service
of years of creditable service previously purchased under this paragraph or s. 40.25

c. At the time of application, the *participant participating employee* furnishes
evidence of such service that is acceptable to the department.

d. Except as provided in sub. (4) (b), at the time of application, the *participant
participating employee* pays to the department a lump sum equal to the present
value of the creditable service applied for under this paragraph, in accordance with
rates actuarially determined to be sufficient to fund the cost of the increased benefits
that will result from granting the creditable service under this paragraph. The
department shall by rule establish different rates for different categories of
participants, based on factors recommended by the actuary.
NOTE: This Section replaces the term “participant” with “participating employee” in a statute relating to purchasing creditable service for purposes of the Wisconsin Retirement System.

SECTION 8

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SECTION 9. 40.63 (10) of the statutes is amended to read:

40.63 (10) Upon termination of an annuity in accordance with sub. (9), each participant whose annuity is so terminated shall, as of the beginning of the calendar month following termination, be credited with additional contributions equal to the then present value of the portion of the terminated annuity which was originally provided by the corresponding type of additional contributions. Except for additional contributions, the retirement account of the participant shall be reestablished as if the terminated annuity had never been effective, including crediting of interest and of any contributions and creditable service earned during the period the annuity was in force.

NOTE: This Section clarifies that, under the Wisconsin Retirement System, an individual may not earn contributions and creditable service during a period in which the individual receives an annuity from the Wisconsin Retirement System based on the individual's own service as a participating employee.

SECTION 10. 40.86 (1) (intro.) of the statutes is created to read:

40.86 (1) (intro.) Expenses authorized under section 125 of the Internal Revenue Code, which may include any of the following:

SECTION 11. 40.86 (1) of the statutes is renumbered 40.86 (1) (a).

SECTION 12. 40.86 (2) of the statutes is renumbered 40.86 (1) (b).

SECTION 13. 40.86 (3) of the statutes is renumbered 40.86 (1) (c).

SECTION 14. 40.86 (4) of the statutes is renumbered 40.86 (2m).

NOTE: Sections 10 and 14 align statutory language with the Internal Revenue Code by distinguishing between expenses reimbursable under two different plan types. Sections 10 to 13 address expenses authorized under section 125 plans, and Section 14 addresses expenses authorized under section 132 plans.

(END)