

1979 Assembly Bill 40

Date published: September 14, 1979

**CHAPTER 38, Laws of 1979**  
(Vetoed in Part)

AN ACT to amend 753.075 (3) and 806.04 (11); and to create 13.91 (1) (c), 15.161 (intro.), 20.515 (2) and subchapter IX of chapter 40 of the statutes, relating to restricting the pay of a public employe receiving a retirement benefit from a public employe retirement system, granting rule-making authority, providing a penalty and making an appropriation.

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

**SECTION 1. Legislative purpose.** The legislature finds that the payment of retirement benefits to public employes by Wisconsin public employe retirement systems results in a fortuitous, unseemly and unintended large increase in the effective rate of compensation the public employes receive for their service to the public. This occurrence imposes unintended costs upon the Wisconsin public employe retirement systems, discriminates against and discourages public employes performing comparable service, results in the unnecessary expenditures by public employer for employment compensation, stimulates inappropriate and spurious transfer and loss of experienced public employes and undermines the confidence of the public in their civil servants. The purpose of this act is to reduce the costs imposed upon the Wisconsin public employe retirement systems and the public employers, to restore equity of compensation among public employes, to remove the incentive for inappropriate transfers between public employers and to restore public confidence in civil servants by discouraging and ameliorating the practice of public employes accepting retirement benefits paid by Wisconsin public employe retirement systems while receiving an adequate salary.

Vetoed  
in Part

~~SECTION Im. 13.91 (1) (c) of the statutes is created to read:  
13.91 (1) (c) Perform the functions prescribed in s. 40.95 for the review of administrative rules.~~

SECTION 2. 15.161 (intro.) of the statutes is created to read:

15.161 (intro.) The department of employe trust funds shall have the program responsibilities specified for the department under subch. IX of ch. 40. In addition:

SECTION 3. At the appropriate place in the schedule in section 20.005 of the statutes, insert the following amounts for the purposes indicated:

	1979-80	1980-81
<b>20.515 Employe trust funds, department of</b>		
(2 ) RETIREMENT BENEFIT OFFSET		
(a) Administration GPR A	18,800	18,100

SECTION 4. 20.515 (2) of the statutes is created to read:

20.515 (2) RETIREMENT BENEFIT OFFSET. (a) *Administration*. The amounts in the schedule for the administration of subch. IX of ch. 40.

SECTION 5. Subchapter IX of chapter 40 of the statutes is created to read:

CHAPTER 40

SUBCHAPTER IX

EMPLOYMENT OF RETIRED EMPLOYES

**40.90 Definitions.** In this subchapter:

(1) "Elected official" means:

(a) A supreme court justice, court of appeals judge, circuit court judge or a state, county, municipal, school district or other public official elected by the vote of the people; or

(b) A person appointed as provided in ch. 17 to fill a vacancy in a position as specified in par. (a).

(2) "Employe" means an employe of a governmental unit.

(3) "Governmental unit" means the state or any other unit of government or instrumentality of 2 or more units of government within the state.

(4) "Pay" means the gross amount paid to an employe as salary or wages for personal services rendered to or for a governmental unit, including amounts provided through deferred compensation or tax shelter agreements but excluding overtime compensation. For the purposes of this subsection, the gross amount paid shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, and charitable contributions or similar amounts.

(5) "Retirement benefit" means a series of periodic payments payable on retirement of an employe under ch. 41 or 42 or chapter 201 or 396, laws of 1937. Retirement benefit does not include any portion of a benefit derived from voluntary additional contributions by the employe. For the purposes of this subsection, the amount of retirement benefit shall be determined prior to any deductions for taxes, insurance premiums, or other deductions which reduce the amount of benefit actually paid.

**40.91 Wages reduced to offset retirement benefit.** (1) Notwithstanding any other law, an employe who is occupying a position for which the rate of pay per month is over the dollar base and who also receives retirement benefits shall have his or her gross monthly pay reduced, but not below the dollar base, by the lesser of:

(a) The amount of the gross monthly retirement benefits the employe receives; or

(b) The amount determined by dividing the product of the gross monthly pay which is in excess of the dollar base times the monthly retirement benefit by the dollar base.

(2) For the purpose of sub. (1), the dollar base is \$1,667 from the effective date of this act (1979) through December 31 of the 2nd calendar year commencing after the effective date of this act (1979). The department shall establish the dollar base for each subsequent calendar year by multiplying the dollar base for the previous calendar year by the percentage increase in the average of all earnings paid during the preceding calendar year over the average of all earnings paid in the next preceding calendar year to participants of the Wisconsin retirement fund who were participating employees throughout both preceding calendar years.

(3) (a) For purposes of determining the reduction ratio provided by sub. (1) where the rate of pay is established on some basis other than monthly, the following are equivalent to one month.

1. Hourly rate multiplied by 173.
2. Daily rate multiplied by 21.63.
3. Weekly rate multiplied by 4.33.
4. Biweekly rate multiplied by 2.16.

(b) Where the pay periods of a governmental unit are more frequent than monthly, the governmental unit shall convert the pay by the equivalents provided in par. (a) before determining any reduction under sub. (1).

(4) If an employe receives pay from 2 or more governmental units for the same employment the total amount of pay received by the employe from all the governmental units may not exceed the amount provided by sub. (1). The offset against an employe's pay under sub. (1) shall be applied by the governmental unit paying the greater portion of an employe's compensation. If all government units pay an equal portion of the pay each shall apply an equal portion of the offset under sub. (1).

**40.92 Retirement benefit; notice.** (1) An employe shall give or mail written notice of information concerning a retirement benefit and the pay the employe receives which is necessary to a determination of compliance with s. 40.91 to the person designated by sub. (2):

(a) Within 10 days after commencing employment with a governmental unit or after receipt of notice that a retirement benefit is to be paid, whichever is later.

(b) Within 10 days after receiving information which renders information previously provided under this section incorrect.

(c) Within 30 days after this subchapter first becomes applicable to the employe under s. 40.96.

(2) An employe shall give or mail written notice under sub. (1) to:

(a) The department.

(b) To the clerk of each governmental unit other than the state from which the employe receives pay or if there is no clerk, to an officer, director or managing agent other than the employe.

(c) If the employe is not an elected official, to the appointing authority.

(3) An employe other than an elected official who violates this section may be removed, suspended without compensation, reduced in compensation or discharged in the manner provided by law.

(4) An employe who knowingly violates this section is subject to a civil forfeiture of not more than \$200 or an amount equal to the pay received in excess of the amount authorized under this subchapter, whichever is greater. The civil forfeiture provided by this subsection is in addition to any amounts recoverable under s. 40.93.

(5) The governmental unit of any appointing authority who knowingly pays or causes to be paid to any employe subject to this subchapter an amount in excess of the amount authorized by s. 40.91 is subject to a civil forfeiture of not more than \$200 or an amount equal to the excess amount paid to the employe, whichever is greater. The governmental unit may bring civil action against the appointing authority to recover the amount of forfeiture paid, and may remove, suspend or reduce the compensation of an appointing authority who is not an elected official who knowingly made or authorized the excess payments.

**40.93 Enforcement.** (1) A retirement system established under ch. 41 or 42 or under chapter 201 or 396, laws of 1937, and a governmental unit shall promptly furnish to the department or a governmental unit, on request, the information available to it which relates to a retirement benefit or compensation paid to an employe which is necessary to determine compliance with this subchapter.

(2) A governmental unit may bring a civil action to recover:

- (a) Pay paid to an employe in violation of s. 40.91; or
- (b) Pay intentionally paid, with the knowledge of the employe, to offset the limit imposed by s. 40.91.

(3) The department of justice may bring a civil action, to recover, on behalf of a governmental unit, an amount due under sub. (2) if:

- (a) The department so requests; and
- (b) The governmental unit fails to commence an action within 60 days after receiving written notice from the department that an amount may be recovered under sub. (2).

(4) An action under sub. (2) or (3) shall be commenced within 6 years after the cause of action accrues or be barred.

**40.94 Department; powers.** (1) The secretary may promulgate rules necessary to the administration of this subchapter.

(2) The secretary shall administer this subchapter and may issue enforceable orders to any agency of the state on all matters relating to the administration, effect and enforcement of this subchapter.

(3) If any government unit other than the state violates s. 40.91 or 40.93 (1), the secretary may certify to the department of administration that the government unit is not in compliance and the department of administration shall withhold any apportionment of state aid or taxes of any kind payable to the government unit after receipt of the certificate until the department certifies the government unit is in compliance.

~~40.95 Review and disapproval of rules. (M) DEFINITIONS. In this section:~~

- ~~(a) "Proposed rule" means any rule to be created, amended, renumbered or repealed.~~
- ~~(b) "Working day" means each day except Saturday, Sunday and those holidays designated in s. 230.35 (4) (a).~~

~~(2) SUBMISSION TO LEGISLATIVE COUNCIL STAFF. Prior to any public hearing on a proposed rule under this subchapter or if no public hearing is required, prior to notification under s. 227.018 (2), the secretary shall submit the proposed rule to the legislative council staff for review.~~

~~(3) ROLE OF LEGISLATIVE COUNCIL STAFF. The legislative council staff shall act as a clearinghouse for rule drafting under this subchapter. The council staff shall issue a report on each proposed rule which is referred to it under this section no later than the end of the 20th working day following the day on which the proposed rule is referred, unless an extension, not to exceed another 20 work days, is granted by the chairman of the council. The council staff shall cooperate with the secretary and the revisor of statutes to:~~

- ~~(a) Review the statutory authority under which the secretary intends to adopt the rule.~~

Vetoed  
in Part

Vetoed  
in Part

(b) Ensure that the procedures for the promulgation of a rule required by ch. 227 are followed.

(c) Review proposed rules for form, style and placement in the administrative code.

(d) Review proposed rules to avoid conflict with or duplication of existing rules.

(e) Review proposed rules to provide adequate references to related statutes, related rules and forms.

(f) Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

(g) Review proposed rules to determine potential conflicts and to make comparisons with related federal regulations.

(h) Streamline and simplify the rule-making process.

(4) ASSISTANCE TO STANDING COMMITTEES. The legislative council staff shall work with and assist the appropriate standing committees throughout the rule-making process under this subchapter. The legislative council staff may issue recommendations concerning proposed rules which the secretary shall submit with the notice required under s. 227.018 (2).

(5) NOTIFICATION OF STANDING COMMITTEES. The secretary shall notify the presiding officer of each house of the legislature when any proposed rule under this subchapter is in final draft form by submitting a notice to the presiding officer to this effect. Each presiding officer shall refer the notice to one standing committee by the end of the 2nd working day following the day on which the notice is received. The secretary may withdraw a proposed rule at any time by notifying the presiding officer of his or her intention not to promulgate the rule. The secretary shall cause a notice that a proposed rule is referred to the presiding officers to appear in the Wisconsin administrative register. Each presiding officer shall cause a similar notice to appear in the journal of the house.

(6) FORM OF NOTICE. The notice shall include the proposed rule in the form specified in s. 227.024 (1), an analysis, any recommendations of the legislative council staff and a report. The report shall include findings of fact, conclusions and recommendations which demonstrate the need for the proposed rule and its reasonableness.

(7) STANDING COMMITTEE REVIEW. (a) *Standing committee meeting.* A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the secretary to dispatch a representative to attend the meeting and hold a public hearing to review the proposed rule.

(b) *Standing committee review period.* The standing committee review period extends for 30 days after the notice is published under sub. (5) and if within the 30-day period a standing committee directs the secretary to meet with it to review the draft, the standing committee review period is continued for 30 days from the date of that request.

(c) *Secretary not to promulgate rule pending standing committee review.* The secretary may not promulgate a proposed rule under this subchapter during the standing committee review period unless both committees waive their authority to disapprove the proposed rule prior to the expiration of that period.

(d) *Standing committee action.* Either standing committee may disapprove the proposed rule or part of the proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the secretary may promulgate the rule.

(e) *Referral.* If a proposed rule is referred to standing committees and the review period under par. (b) has not expired and the committees have not waived their authority to disapprove the proposed rule under par. (c) at the time of final adjournment of the legislature, the presiding officer of each house may rerefer the proposed rule to a different

standing committee. In this case, the presiding officers shall publish a revised notice under sub. (2) and the standing committee review period begins on the date of referral.

(8) ~~JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES.~~ (a) *Referral.* If either standing committee disapproves a proposed rule or part of a proposed rule, the committee shall refer the proposed rule or the part disapproved to the joint committee for the review of administrative rules.

(b) *Joint committee review period.* The joint committee review period extends for 30 days after a proposed rule is referred to it. The joint committee shall meet and take action in executive session during that period.

(c) *Secretary not to promulgate rule pending joint committee review.* The secretary may not promulgate a proposed rule or any part thereof which is disapproved by a standing committee under this subchapter unless the action of the standing committee is reversed by the joint committee for the review of administrative rules under par. (d) or until the bill introduced under par. (e) fails of enactment. The secretary may promulgate any portion of a rule which is not disapproved.

(d) *Joint committee action.* The joint committee for the review of administrative rules may reverse the disapproval of a proposed rule or portion thereof by a standing committee by taking action to authorize adoption of the rule or portion thereof within the joint committee review period. The joint committee may uphold the disapproval of a proposed rule or portion thereof by a standing committee by taking action to disapprove the rule or portion thereof within the joint committee review period. The joint committee may remand the proposed rule or disapproved portion once only to the secretary for further consideration or a public hearing, or both. If the joint committee disapproves a proposed rule or portion of a rule, the secretary may not promulgate the proposed rule or portion thereof until the bill introduced under par. (e) fails of enactment.

(e) *Bill to support disapproval.* When the joint committee for the review of administrative rules disapproves a proposed rule or portion of a proposed rule under this subchapter, the committee shall as soon as possible place before the legislature a bill to support the disapproval. If the bill is defeated, or fails of enactment in any other manner, the proposed rule or disapproved portion thereof may be promulgated. If the bill becomes law, the proposed rule or disapproved portion thereof may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule or disapproved portion.

(9) ~~NONAPPLICABILITY.~~ This section does not apply to emergency rules adopted under s. 227.027.

**40.96 Applicability.** (1) This subchapter applies to pay received by an employe after the effective date of this act (1979), except as provided by subs. (2) and (3).

(2) Except as provided by sub. (3), this subchapter applies to pay received by an employe who is a public officer for the purposes of article IV, section 26 of the constitution only after the public officer commences a term of office after the effective date of this act (1979).

(3) This subchapter applies to every judge of a court of record and justice of the supreme court on and after the date that any justice of the supreme court or judge of a court of record commences a term of office after the effective date of this act (1979).

SECTION 6. 753.075 (3) of the statutes is amended to read:

753.075 (3) **COMPENSATION.** (a) Temporary reserve judges shall receive a per diem of \$125 and while serving outside the county in which they reside shall also receive actual and necessary expenses incurred in the discharge of judicial duties. This per diem compensation is not subject to s. 41.11 (12) or subch. IX of ch. 40 but the combined amount of this compensation and any other judicial compensation together with retirement annuities under the Wisconsin retirement fund, the Milwaukee county retirement fund and

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other state, county, municipal, or other Wisconsin governmental retirement funds, or social security or other federal retirement funds received by him or her during any one calendar year month shall not exceed one-twelfth of the yearly compensation of a circuit judge, including any county supplements paid as provided in ss. 753.016 (2) and 753.071. County supplements shall not be paid after July 1, 1980. The per diem compensation and actual and necessary expenses shall be paid from the appropriation under s. 20.625 (1) (a) when the judge is assigned to a circuit court and from the appropriation under s. 20.660 (1) (a) when the judge is assigned to the court of appeals.

(b) Permanent reserve judges shall receive compensation equal to the compensation for the 6-month period of a judge of the court to which they are assigned. If the incumbent judge receives a county supplement, the permanent reserve judge shall receive the county supplement, paid by the county, as provided in ss. 753.016 (2) and 753.071, except that county supplements shall not be paid after July 1, 1980. This compensation is not subject to s. 41.11 (12) or subch. IX of ch. 40 but the combined amount of this compensation and any other judicial compensation together with retirement annuities under the Wisconsin retirement fund, the Milwaukee county retirement fund or other state, county, municipal or other Wisconsin governmental retirement funds, or social security or other federal retirement funds received by him or her during any one calendar year month shall not exceed one-twelfth of the yearly compensation of a circuit judge, including any county supplements paid as provided in ss. 753.016 (2) and 753.071. Permanent reserve judges shall receive health insurance calculated under s. 40.14 or 40.145 and s. 40.16 and vacation benefits calculated under s. ~~16.30 (1) [230.35 (1)]~~ 230.35 (1). Except for county supplements, compensation for permanent reserve judges shall be paid from the appropriation under s. 20.625 (1) (c).

SECTION 7. 806.04 (11) of the statutes is amended to read:

806.04 (11) PARTIES. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration may prejudice the right of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party, and shall be entitled to be heard. If a statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (9) is placed in issue by the parties, the joint committee for review of administrative rules shall be served with a copy of the petition and, with the approval of the joint committee on legislative organization, shall be made a party and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16, subch. IX of ch. 40 or s. 753.075, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (9) is placed in issue by the parties, the joint committee on legislative organization shall be served with a copy of the petition and the joint committee on legislative organization, the senate committee on organization or the assembly committee on organization may intervene as a party to the proceedings and be heard.

SECTION 8. **Program responsibilities.** (1) In the list of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, reference to "subch. IX of ch. 40" is inserted.

(2) In the list of program responsibilities specified for the department of administration in section 15.101 (intro.) of the statutes, reference to section "40.94" is inserted.

**SECTION 9. Effective date.** This act takes effect on July 1, 1979, or on the first day of the 2nd month commencing after the date of publication, whichever is later.

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