



2003 ASSEMBLY BILL 537

September 25, 2003 - Introduced by Representatives NISCHKE, McCORMICK, HAHN, LADWIG, MUSSER, MONTGOMERY, TOWNS, OWENS, WEBER, KREIBICH, VAN ROY, KRAWCZYK, OLSEN and OTT, cosponsored by Senators KANAVAS, STEPP, LEIBHAM, WELCH, DARLING, ZIEN and LASSA. Referred to Committee on Economic Development.

1 **AN ACT to renumber** 40.04 (7) (c); **to renumber and amend** 25.17 (5); **to amend**
2 25.17 (6), 25.17 (14) (intro.), 25.17 (15), 40.02 (34), 40.03 (1) (n), 40.04 (3) (intro.),
3 40.04 (3) (a), 40.04 (3) (b), 40.04 (3) (d), 40.04 (4) (a) 2., 40.04 (7) (intro.), 40.04
4 (7) (a) (intro.), 40.23 (2m) (b) and 40.28 (1) (intro.); and **to create** 25.14 (1) (a)
5 19., 25.17 (1) (xo), 25.17 (5) (c), 40.02 (23) (c), 40.02 (59), 40.04 (7) (c) 2., 40.04
6 (7) (d), 40.23 (2m) (cm) and 40.285 of the statutes; **relating to:** creating a
7 venture capital investment trust in the public employee trust fund and
8 permitting participating employees in the Wisconsin Retirement System to
9 allocate retirement contributions in the venture capital investment trust.

Analysis by the Legislative Reference Bureau

Under current law, participants in the Wisconsin Retirement System (WRS), depending on their date of initial employment under the WRS, are eligible to have their retirement contributions segregated into a fixed annuity and a variable annuity. Currently, a WRS participating employee may elect to have 50% of his or her retirement contributions segregated into a variable annuity. Contributions segregated for a fixed annuity are invested as part of the fixed retirement investment trust and contributions segregated for a variable annuity are invested as part of the

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variable retirement investment trust. Assets in both trusts are managed and invested by the Investment Board. Assets in the variable retirement investment trust are primarily invested in equity securities, while assets in the fixed retirement investment trust are invested in a number of different investment vehicles. For a WRS participant who has selected the variable annuity option, the value of his or her initial WRS annuity will depend on the investment return on assets in the variable retirement investment trust.

This bill creates a third option that WRS participants may select for their retirement contributions. Under the bill, a WRS participating employee may elect to have 10% of his or her retirement contributions segregated into a venture capital annuity. Contributions segregated for a venture capital annuity are then invested as part of the venture capital investment trust. Assets of the venture capital investment trust are managed by the Investment Board and are required to be invested primarily in equity securities of corporations that are in the venture capital stage. A corporation is considered to be in the venture capital stage if it fulfills all of the following requirements:

1. It has at least 50% of its property and at least 50% of its payroll in this state.
2. It has no more than 500 employees covered by Wisconsin unemployment insurance.
3. It derives no more than 25% of its gross receipts from rents, interest, dividends, and sales of intangible investment assets combined unless the corporation derives less than \$3,000 of that income and has not been incorporated for more than two calendar years.
4. It has not issued stock that is listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers automated quotation system.
5. It has not liquidated its assets in whole or in part for tax purposes only in order to fulfill certain tax requirements and then reorganized.

Under the bill, if a WRS participant has elected the variable annuity option and the venture capital annuity option, the participant must allocate 40% of his or her retirement contributions for a variable annuity and 10% of his or her retirement contributions for a venture capital annuity; the remaining 50% of the participant's retirement contributions must be allocated for a fixed annuity. If a WRS participant has only elected the venture capital annuity option, the participant must allocate 10% of his or her retirement contributions for a venture capital annuity; the remaining 90% of the participant's retirement contributions must be allocated for a fixed annuity.

This bill will be referred to the Joint Survey Committee on Retirement Systems for a detailed analysis, which will be printed as an appendix to this bill.

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

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

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1 **SECTION 1.** 25.14 (1) (a) 19. of the statutes is created to read:

2 25.14 (1) (a) 19. Venture capital investment trust.

3 **SECTION 2.** 25.17 (1) (xo) of the statutes is created to read:

4 25.17 (1) (xo) Venture capital investment trust (s. 40.04 (3)).

5 **SECTION 3.** 25.17 (5) of the statutes is renumbered 25.17 (5) (a) and amended
6 to read:

7 25.17 (5) (a) The limitations upon the percentage of the assets of any fund that
8 are imposed by sub. (4) or any other statute shall not be applicable to investments
9 made by the board of funds in the variable retirement investment trust and the
10 venture capital investment trust created under s. 40.04 (3) and those investments
11 shall be excluded in computing the assets to which the limitations imposed by sub.
12 (4) apply.

13 **(b)** Assets of the variable retirement investment trust shall be invested
14 primarily in equity securities that shall include common stocks, real estate or other
15 recognized forms of equities whether or not subject to indebtedness, including
16 securities convertible into common stocks and securities of corporations in the
17 venture capital stage. The board may, however, temporarily invest assets of the
18 variable retirement investment trust in investments that are authorized under sub.
19 (3), but the assets so temporarily invested shall be replaced by equity securities at
20 the earliest time considered by the board to be practicable considering the then
21 existing condition of the securities market and other influential factors. Investments
22 in securities of corporations that are in the venture capital stage shall not exceed 2%
23 of the admitted assets of the variable retirement investment trust.

24 **SECTION 4.** 25.17 (5) (c) of the statutes is created to read:

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1 25.17 (5) (c) Assets of the venture capital investment trust shall be invested
2 primarily in equity securities of corporations that are in the venture capital stage.
3 The board may, however, temporarily invest assets of the venture capital investment
4 trust in investments that are authorized under sub. (3), but the assets so temporarily
5 invested shall be replaced by equity securities at the earliest time considered by the
6 board to be practicable considering the then existing condition of the securities
7 market and other influential factors. Under this paragraph, a corporation is
8 considered to be in the venture capital stage if it fulfills all of the requirements
9 specified in s. 71.01 (10) (a) to (e).

10 **SECTION 5.** 25.17 (6) of the statutes is amended to read:

11 25.17 (6) Notwithstanding any other statute, transfers from the variable
12 retirement investment trust and the venture capital investment trust to the fixed
13 retirement investment trust under s. 40.04 (7) may be made in cash or securities or
14 both as determined by the board. The board shall determine market values for
15 securities in the variable retirement investment trust and the venture capital
16 investment trust as of the close of business on the last working day preceding a
17 transfer. If securities are transferred, to the extent determined feasible by the board,
18 a proportionate amount of all securities in even hundreds of shares of stock or even
19 thousands of par value of bonds in the variable retirement investment trust or the
20 venture capital investment trust shall be transferred. The board may hold or sell the
21 transferred securities as it determines appropriate considering market and
22 economic conditions. Any limitation on the percentage of assets in common stocks
23 or in the stock of one company does not apply to the transferred securities, except the
24 board shall, at such time as it determines that market, economic and other conditions

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1 are appropriate to the sale of the securities, sell sufficient transferred securities so
2 as to comply with percentage of asset limitations.

3 **SECTION 6.** 25.17 (14) (intro.) of the statutes is amended to read:

4 25.17 (14) (intro.) As of December 31 of each year, make and file with the
5 department of employee trust funds a report of the value of the assets of the fixed
6 retirement investment trust ~~and of~~, the variable retirement investment trust, and
7 the venture capital investment trust, determined as of that date at market value for
8 the variable retirement investment trust and the venture capital investment trust
9 and on the following basis for the fixed retirement investment trust:

10 **SECTION 7.** 25.17 (15) of the statutes is amended to read:

11 25.17 (15) For purposes of the power and authority of the board to make
12 investments, the “admitted assets” of the fixed retirement investment trust ~~or~~, the
13 variable retirement investment trust, and the venture capital investment trust shall
14 be the total valuation of the assets of each such trust as set forth in the last report
15 made under sub. (14).

16 **SECTION 8.** 40.02 (23) (c) of the statutes is created to read:

17 40.02 (23) (c) For the venture capital annuity division, the rate, disregarding
18 fractions less than one percent, which will distribute the net gain or loss of the
19 venture capital annuity division to the respective venture capital annuity balances
20 and reserves using the same procedure as provided in par. (a) for the fixed annuity
21 division.

22 **SECTION 9.** 40.02 (34) of the statutes is amended to read:

23 40.02 (34) “Fixed annuity” means any annuity other than a variable annuity
24 or a venture capital annuity.

25 **SECTION 10.** 40.02 (59) of the statutes is created to read:

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1 40.02 (59) "Venture capital annuity" means any annuity provided by the
2 accumulations in the venture capital annuity division established under s. 40.04 (7)
3 providing for the dollar amount of benefits or other contractual payments or values
4 to vary so as to reflect differences which may arise between the total value of the
5 annuity reserve for venture capital annuities and the reserve that would be required
6 if the annuities were fixed annuities.

7 **SECTION 11.** 40.03 (1) (n) of the statutes is amended to read:

8 40.03 (1) (n) May allow any separate retirement system for employees of one
9 or more employers to deliver or send funds representing assets of that system to the
10 department. If the department accepts delivery or transmission, the department
11 shall purchase shares of the fixed retirement investment trust ~~or~~, variable
12 retirement investment trust, or venture capital investment trust or both any
13 combination of the 3 trusts with those funds, subject to rules under sub. (2) (q). Each
14 retirement system shall pay as provided in s. 40.04 (2) for the costs of investing and
15 administering any of its funds sent or delivered to the department.

16 **SECTION 12.** 40.04 (3) (intro.) of the statutes is amended to read:

17 40.04 (3) (intro.) A fixed retirement investment trust, a venture capital
18 investment trust, and a variable retirement investment trust shall be maintained
19 within the fund under the jurisdiction and management of the investment board for
20 the purpose of managing the investments of the retirement reserve accounts and of
21 any other accounts of the fund as determined by the board, including the accounts
22 of separate retirement systems. Within the fixed retirement investment trust there
23 shall be maintained a transaction amortization account and a market recognition
24 account, and any other accounts as are established by the board or the investment
25 board. A current income account shall be maintained in the venture capital

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1 investment trust and variable retirement investment trust. All costs of owning,
2 operating, protecting and acquiring property in which either trust any of the 3 trusts
3 has an interest shall be charged to the current income or market recognition account
4 of the trust having the interest in the property.

5 **SECTION 13.** 40.04 (3) (a) of the statutes is amended to read:

6 40.04 (3) (a) The net gain or loss of the venture capital investment trust and
7 the variable retirement investment trust shall be distributed annually on December
8 31 to each participating account in the same ratio as each account's average daily
9 balance within the respective trust bears to the total average daily balance of all
10 participating accounts in the trust. The amount to be distributed shall be the excess
11 of the increase within the period in the value of the assets of the trust resulting from
12 income from the investments of the trust and from the sale or appreciation in value
13 of any investment of the trust, over the decrease within the period in the value of the
14 assets resulting from the sale or the depreciation in value of any investments of the
15 trust.

16 **SECTION 14.** 40.04 (3) (b) of the statutes is amended to read:

17 40.04 (3) (b) The assets of the fixed retirement investment trust shall be
18 commingled ~~and,~~ the assets of the variable retirement investment trust shall be
19 commingled, and the assets of the venture capital investment trust shall be
20 commingled. No particular contributing benefit plan shall have any right in any
21 specific item of cash, investment or other property in either trust other than an
22 undivided interest in the whole as provided in this paragraph. The department of
23 administration shall maintain any records as may be required to account for each
24 contributing account's share in the corresponding trust except that the employee

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1 accumulation reserve, the employer accumulation reserve and the annuity reserve
2 shall be treated as a single account, except as provided in sub. (7).

3 **SECTION 15.** 40.04 (3) (d) of the statutes is amended to read:

4 40.04 (3) (d) Notwithstanding par. (a), assets of the fixed retirement
5 investment trust which are authorized to be invested in common or preferred stock
6 may, if authorized by rule, be invested as a part of the variable retirement investment
7 trust or the venture capital investment trust with that portion of the annual
8 distributions of net gains or losses to the fixed retirement investment trust from the
9 variable retirement investment trust and the venture capital investment trust being
10 credited to the market recognition account.

11 **SECTION 16.** 40.04 (4) (a) 2. of the statutes is amended to read:

12 40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's
13 closing balance at the effective rate on all employee required contribution
14 accumulations in the venture capital annuity division and the variable annuity
15 division, on all employee required contributions in the fixed annuity division on
16 December 31, 1984, on all employee required contributions in the fixed annuity
17 division of participants who are not participating employees after
18 December 31, 1984, and on all employee and employer additional contribution
19 accumulations and with interest on the prior year's closing balance at the assumed
20 benefit rate on all employee required contribution accumulations in the fixed
21 annuity division for participants who are participating employees after
22 December 31, 1984, but who terminated covered employment before December 30,
23 1999.

24 **SECTION 17.** 40.04 (7) (intro.) of the statutes is amended to read:

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1 40.04 (7) (intro.) The reserves established under subs. (4), (5), and (6) shall be
2 divided both individually and for the purposes of sub. (3) ~~between~~ among a fixed
3 annuity division, a venture capital annuity division, and a variable annuity division.
4 All required and additional contributions shall be credited to the fixed annuity
5 division except:

6 **SECTION 18.** 40.04 (7) (a) (intro.) of the statutes is amended to read:

7 40.04 (7) (a) (intro.) As otherwise elected by a participant prior to
8 April 30, 1980, or on or after January 1, 2001. Any participant who was a
9 participant prior to April 30, 1980, and whose accounts on January 1, 1982, include
10 credits segregated for a variable annuity shall have his or her required and
11 additional contributions made on or after January 1, 1982, credited to the variable
12 annuity division in a manner consistent with the participant's election prior to
13 April 30, 1980, unless prior to January 1, 1982, the participant terminated such
14 election under s. 40.85, 1979 stats. Any participant who elects or has elected to have
15 any of his or her credits segregated for a variable annuity on or after
16 January 1, 2001, shall have 50% of his or her required and additional contributions
17 made on or after the date of election credited to the variable annuity division, except
18 that if the participant has made an election under par. (d) the participant may only
19 have 40% of the contributions credited to the variable annuity division. The
20 department shall by rule provide that any participant who elects or has elected
21 variable participation prior to April 30, 1980, or on or after January 1, 2001, may
22 elect to cancel that variable participation as to future contributions. The
23 department's rules shall permit a participant who elects or has elected to cancel
24 variable participation as to future contributions, or an annuitant, to elect to transfer
25 previous variable contribution accumulations to the fixed annuity division. A

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1 transfer of variable contribution accumulations under this paragraph shall result in
2 the participant receiving the accrued gain or loss from the participant's variable
3 participation. A participant may specify that election to cancel participation in the
4 variable annuity division is conditional. If the participant so specifies the election
5 is effective on the first date on which it may take effect on which the participant:

6 **SECTION 19.** 40.04 (7) (c) of the statutes is renumbered 40.04 (7) (c) 1.

7 **SECTION 20.** 40.04 (7) (c) 2. of the statutes is created to read:

8 40.04 (7) (c) 2. Any participant whose required contributions are segregated in
9 any portion to provide for a venture capital annuity may direct that any part or all
10 of subsequent additional contributions credited to the participant's account be
11 segregated to provide for a venture capital annuity and may at any time by filing a
12 form prescribed by the department change the portion being segregated for any
13 future additional contributions.

14 **SECTION 21.** 40.04 (7) (d) of the statutes is created to read:

15 40.04 (7) (d) Beginning on January 1, 2004, a participant may elect to have 10%
16 of his or her required and additional contributions made on or after the date of
17 election credited to the venture capital annuity division. The department shall by
18 rule provide that any participant may elect to cancel that venture capital
19 participation as to future contributions. The department's rules shall permit a
20 participant who elects or has elected venture capital participation to cancel venture
21 capital participation as to future contributions or an annuitant to elect to transfer
22 previous venture capital annuity contribution accumulations to the fixed annuity
23 division. A transfer of venture capital contribution accumulations under this
24 paragraph shall result in the participant receiving the accrued gain or loss from the
25 participant's venture capital participation. A participant may specify that election

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1 to cancel participation in the venture capital annuity division is conditional. If the
2 participant so specifies the election is effective on the first date on which it may take
3 effect on which the participant is either:

4 1. An annuitant and the amount of the annuity the participant or member will
5 receive if the election is made effective is greater than or equal to the amount of the
6 annuity the participant or member would have received if the participant or member
7 had not elected venture capital participation.

8 2. Not an annuitant and the accumulated amount which is to be transferred
9 to the fixed annuity division is equal to or greater than the amount which would have
10 accumulated if the segregated contributions had been originally credited to the fixed
11 annuity division.

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

13 40.23 (2m) (b) Except as provided in s. 40.26, subject to the limitations under
14 section 415 of the Internal Revenue Code, the initial amount of the normal form
15 annuity shall be an amount equal to 70%, or 65% for participants whose formula rate
16 is determined under par. (e) 3. or 85% for participants whose formula rate is
17 determined under par. (e) 4., of the participant's final average earnings plus the
18 amount which can be provided under pars. (c) and to (d) or, if less, shall be in the
19 monthly amount equal to the sum of the amounts determined under pars. (c), ~~(d)~~ and
20 to (e) as modified by par. (f) and in accordance with the actuarial tables in effect on
21 the annuity effective date. If the participant has creditable service under both par.
22 (e) 4. and another category under par. (e), the percent applied under this paragraph
23 shall be determined by multiplying the percent that each type of creditable service
24 is of the participant's total creditable service by 85% and 65% or 70%, respectively,
25 and adding the results, except that the resulting benefit may not be less than the

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1 amount of the normal form annuity that could be paid based solely on the creditable
2 service under par. (e) 4.

3 **SECTION 23.** 40.23 (2m) (cm) of the statutes is created to read:

4 40.23 **(2m)** (cm) The annuity which can be provided from a sum equal to 200%
5 of the excess of the participant's required contribution accumulation reserved for a
6 venture capital annuity over the amount to which the contributions would have
7 accumulated at the fixed annuity division effective rate if not so reserved. If the
8 participant's required contribution accumulation reserved for a venture capital
9 annuity is less than the amount to which the contributions would have accumulated
10 at the fixed annuity division effective rate if not reserved, the annuity shall be
11 reduced by the amount which could be provided by a sum equal to 200% of the
12 deficiency.

13 **SECTION 24.** 40.28 (1) (intro.) of the statutes is amended to read:

14 40.28 **(1)** (intro.) Any annuity provided to a participant whose accounts include
15 credits segregated for a variable annuity shall consist of a fixed annuity and, a
16 variable annuity, and, if the participant has made an election under s. 40.04 (7) (d),
17 a venture capital annuity.

18 **SECTION 25.** 40.285 of the statutes is created to read:

19 **40.285 Venture capital benefits. (1)** Any annuity provided to a participant
20 whose accounts include credits segregated for a venture capital annuity shall consist
21 of a fixed annuity, a venture capital annuity, and, if the participant has made an
22 election under s. 40.04 (7) (a), a variable annuity.

23 (a) The initial amount of the venture capital annuity shall be the amount which
24 can be provided on the basis of the actuarial tables in effect on the effective date of
25 the annuity by all of the following amounts, if otherwise available:

