



2011 ASSEMBLY BILL 352

October 31, 2011 – Introduced by Representatives ZIEGELBAUER, NASS, PETERSEN, ENDSLEY, LITJENS, THIESFELDT and WYNN, cosponsored by Senator LASEE. Referred to Committee on Insurance.

1 **AN ACT to amend** 40.22 (2) (a), 40.22 (2) (am), 40.22 (2m) (intro.), 40.22 (2r), 40.22
2 (3) (b) 2., 40.23 (1) (a) 1., 40.26 (1) and 40.26 (2) (intro.); and **to create** 40.26 (1m)
3 of the statutes; **relating to:** eligibility for participating employee status and
4 the Wisconsin Retirement System and post-retirement employment of
5 annuitants under the Wisconsin Retirement System.

Analysis by the Legislative Reference Bureau

Under current law, a participant in the Wisconsin Retirement System (WRS) who has attained the age of 55, or a protective occupation participant who has attained age 50, is entitled to receive a WRS annuity if, among other requirements, the participant is separated from covered employment under the WRS until the latest of the following: the annuity effective date; the date 30 days after the application is received by the Department of Employee Trust Funds (DETF); or the date 30 days after separation from all covered employment. The bill provides that the participant must be separated from covered employment under the WRS for at least 180 days.

2011 Wisconsin Act 32 increased the number of hours that an employee must work in order to become a participating employee in the WRS, from one-third of what is considered full-time employment to two-thirds of what is considered full-time employment, as determined by DETF by rule. This change in law applied to those employees who were first hired by a WRS employer on or after July 1, 2011. This bill reduces that eligibility requirement to 660 hours for a teacher or educational support

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personnel employee, and 1,000 hours for all other employees. The bill further provides that this change in law does not affect employees who were participating employees at any time before July 1, 2011. As a result, these individuals are subject to the one-third employment requirement for WRS participation purposes.

In addition, under current law, when a WRS participant terminates covered employment and becomes an annuitant he or she may return to covered employment and either terminate the annuity and again become a participating employee or, instead, continue to receive the annuity, as well as wages from covered employment. If a participant continues to receive the annuity, he or she may not be a participating employee in the WRS and, in the case of state employment, is not eligible for group insurance benefits provided to participating employees, and may not use any of his or her employment service as a rehired annuitant for any WRS purposes. If the participant terminates the annuity, he or she returns to participating employee status and is eligible for all group insurance benefits provided other participating employees, as well as is able to accumulate additional years of creditable service under the WRS for the additional period of covered employment.

This bill provides that, beginning on the bill's effective date, if a participant in the WRS, who is receiving an annuity, or a disability annuitant who has attained his or her normal retirement date, is appointed to a position in covered employment in which he or she is expected to work at least one-half time, the participant's annuity must be terminated and no annuity payment is payable until after the participant terminates covered employment.

The bill also provides that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, enters into a contract to provide employee services with a participating employer after the bill's effective date, and he or she is expected to work at least one-half time, the participant's retirement annuity must be terminated and no annuity payment is payable until after the participant no longer provides employee services under the contract.

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.

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

1 **SECTION 1.** 40.22 (2) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 40.22 **(2)** (a) Except as provided in sub. (2m), the employee was initially
4 ~~employed by a participating employer~~ a participating employee before July 1, 2011,

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1 and is not expected to work at least one-third of what is considered full-time
2 employment by the department, as determined by rule.

3 **SECTION 2.** 40.22 (2) (am) of the statutes, as created by 2011 Wisconsin Act 32,
4 is amended to read:

5 40.22 (2) (am) Except as provided in sub. (2r), the employee was initially
6 employed by a participating employer on or after July 1, 2011, and is not expected
7 to work at least ~~two-thirds~~ one-half of what is considered full-time employment by
8 ~~the department, as determined by rule.~~ For teachers and educational support
9 personnel employees, one-half of what is considered full-time employment is 660
10 hours of employment with an employer in one year. For all other employees, one-half
11 of what is considered full-time employment is 1,000 hours of employment with an
12 employer in one year.

13 **SECTION 3.** 40.22 (2m) (intro.) of the statutes, as affected by 2011 Wisconsin Act
14 32, is amended to read:

15 40.22 (2m) (intro.) An employee who was ~~initially employed by a participating~~
16 ~~employer~~ a participating employee before July 1, 2011, who is not expected to work
17 at least one-third of what is considered full-time employment by the department,
18 as determined by rule, and who is not otherwise excluded under sub. (2) from
19 becoming a participating employee shall become a participating employee if he or she
20 is subsequently employed by the state agency or other participating employer for
21 either of the following periods:

22 **SECTION 4.** 40.22 (2r) of the statutes, as created by 2011 Wisconsin Act 32, is
23 amended to read:

24 40.22 (2r) An employee who was initially employed by a participating employer
25 on or after July 1, 2011, who is not expected to work at least ~~two-thirds~~ one-half of

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1 what is considered full-time employment by the department, as determined by rule
2 provided under sub. (2) (am), and who is not otherwise excluded under sub. (2) from
3 becoming a participating employee shall become a participating employee if he or she
4 is subsequently employed by the state agency or other participating employer for
5 either of the following periods:

6 (a) At least one year for at least ~~two-thirds~~ one-half of what is considered
7 full-time employment by the department, as determined by rule, or, for an
8 educational support personnel employee, at least one year for at least two-thirds of
9 what is considered full-time employment for a teacher provided under sub. (2) (am).

10 (b) At least ~~1,200~~ 1,000 hours in the immediately preceding 12-month period.

11 **SECTION 5.** 40.22 (3) (b) 2. of the statutes, as created by 2011 Wisconsin Act 32,
12 is amended to read:

13 40.22 (3) (b) 2. The first day after completion of one year of employment for at
14 least ~~two-thirds~~ one-half of what is considered full-time employment by the
15 department, as determined by rule provided under sub. (2) (am), if the person
16 becomes a participating employee under sub. (2r) after the employer's effective date
17 of participation.

18 **SECTION 6.** 40.23 (1) (a) 1. of the statutes is amended to read:

19 40.23 (1) (a) 1. The participant is separated, regardless of cause, and continues
20 to be separated until the annuity effective date, the date 30 days after the application
21 is received by the department, or the date ~~30~~ 180 days after separation, whichever
22 is ~~later~~ latest, from all employment meeting the qualifications for inclusion specified
23 in s. 40.22 for any participating employer.

24 **SECTION 7.** 40.26 (1) of the statutes is amended to read:

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1 40.26 (1) Except as provided in sub. (1m) and ss. 40.05 (2) (g) 2. and 40.23 (1)
2 (am), if a participant receiving a retirement annuity, or a disability annuitant who
3 has attained his or her normal retirement date, receives earnings that are subject
4 to s. 40.05 (1) or that would be subject to s. 40.05 (1) except for the exclusion specified
5 in s. 40.22 (2) (L), the annuity shall be terminated and no annuity payment shall be
6 payable after the month in which the participant files with the department a written
7 election to be included within the provisions of the Wisconsin retirement system as
8 a participating employee.

9 **SECTION 8.** 40.26 (1m) of the statutes is created to read:

10 40.26 (1m) (a) If a participant receiving a retirement annuity, or a disability
11 annuitant who has attained his or her normal retirement date, is appointed to a
12 position in covered employment after the effective date of this paragraph [LRB
13 inserts date], in which he or she is expected to work at least one-half of what is
14 considered full-time employment, as provided under s. 40.22 (2) (am), the
15 participant's retirement annuity shall be terminated and no annuity payment shall
16 be payable until after the participant terminates covered employment.

17 (b) If a participant receiving a retirement annuity, or a disability annuitant
18 who has attained his or her normal retirement date, enters into a contract to provide
19 employee services with a participating employer after the effective date of this
20 paragraph [LRB inserts date], and he or she is expected to work at least one-half
21 of what is considered full-time employment, as provided under s. 40.22 (2) (am), the
22 participant's retirement annuity shall be terminated and no annuity payment shall
23 be payable until after the participant no longer provides employee services under the
24 contract.

25 **SECTION 9.** 40.26 (2) (intro.) of the statutes is amended to read:

